

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

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

DAY: TUESDAY
DATE: SEPTEMBER 27, 2022
CALENDAR: 1:30 P.M. ADVERSARY PROCEEDINGS

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. 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. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[21-2016](#) [FEC-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-10-2021 [\[1\]](#)

AFRICAN METHODIST EPISCOPAL
ZION CHURCH ET AL V. AME ZION
HAGOP BEDOYAN/ATTY. FOR PL.

Final Ruling

The status conference is continued to October 18, 2022, at 1:30 p.m. All counsel are ordered to appear, personally or by telephone, at that date and time. Failure to appear may result in striking pleadings without further notice or hearing. In the event that the Lender Defendants have noticed a Rule 12 motion with respect to Sheila Quintana's First Amended Answer to the Third Amended Cross/Counter/Third Party Complaint, the status conference will likely be continued to the hearing date of that motion.

District Court having ruled on Jeffrey Scott Bleecker et al.'s motion to withdraw the reference, Order, *African Methodist Episcopal Zion Church v. AME Zion Western Episcopal District*, 2:21-cv-01560-KJM-KJN (BK) (E.D. Cal. 2021), ECF No. 19, it appears proper for the court to issue a scheduling order. Fed. R. Civ. P. 16, incorporated by Fed. R. Bankr. P. 7016.

In preparation of the continued status conference, the court requests that counsel for the parties and counsel to review these suggestions.

AT ISSUE

Except as noted the action appears to be at issue. African Methodist Episcopal Zion Church's complaint appears to be at issue. Compl. ECF No. 1. All defendants have answered or, in the case of Chicago Title Company, agreed to be bound by the decision of this court. ECF Nos. 19, 21, 52, 192.

Trustee Golden's Cross-Complaint is not at issue. Cross-Complaint, ECF NO. 52. Chicago Title has agreed to be bound by the decision of this court. ECF Nos. 65, 69, 71. Cross-defendants Bleecker, Evic and Motes have not filed an answer or other responsive pleadings. ECF No. 129, 133 (stipulation and order to suspend trustee Golden's Cross-Complaint. *Id.*

Bleecker, Evic and Motes Cross/Counter/Third Party Complaint is not at issue. ECF No. 192. AME Zion (both the denomination and the local church), as well as Sheila Quintana, have filed answers. ECF No. 146, 149, 221. Since filing her answer, the Lender Defendants and Cross-defendant Quintana have entered into a stipulation, approved by order of this court, for Quintana to file a First Amended Answer. Staccato Powell's default has been entered but not proved up. ECF Nos. 171, 174, 181.

SUSPENSION OF TRUSTEE GOLDEN'S CROSS-COMPLAINT

Cross-complainant Golden and Cross-defendants Bleeker, Evic and Motes have stipulated to suspend the cross-complaint. ECF Nos. 129, 133. That suspension will lift when the court fully resolves the allegations of the complaint.

BIFURCATION

Considering the Stipulation/Order to suspend trustee Golden's Cross-Complaint, ECF No. 129, 133, and Chief Judge Mueller's order on the motion to withdraw (reserving resolution of the 4th and 4th causes of action, a three-part bifurcation exists: (1) Phase I: African Methodist Episcopal Zion Church's complaint appears to be at issue. Compl. ECF No. 1 (all causes of action) and Bleeker, Motes and Evic Cross-complaint (all causes of action except the fourth and fifth causes of action (negligent retention and negligence supervision; (2) Phase II: trustee Golden's Cross-complaint (all causes of action); and (3) Fourth and fifth causes of action in Bleeker/Motes and Evic Cross-complaint (by District Court).

The court believes that the current three-part bifurcation is not workable and that the parties should consider modifying the suspension orders, ECF No. 129, 133, to allow all discovery to be conducted at the present time for all three phases; trial would remain trifurcated (the first two phases in this court and the third phase in district court). The parties are requested to consider this issue and to be prepared to discuss it at the status conference.

Default of Staccato Powell

The court believes that the default prove-up for Staccato Powell should be deferred until at least the first two, and perhaps all three phases of trial are completed. The parties are requested to consider this issue and be heard at the status conference.

Jurisdiction/Core/Non-Core/Consent

This court has jurisdiction. 28 U.S.C. § 1334. Except for the fourth and fifth causes of Bleeker cross-complaint, jurisdiction is core. 28 U.S.C. § 157(b)(2)(B), (H); In re Washington Coast I, LLC 485 B.R. 393, 408 (9th Cir. BAP 2012). With the exception of the fourth and fifth, this action seeks to resolve the question of whether the Bleeker defendants are, in fact, properly secured and, if so, their priority to the disputed property, 1449 Adams, Los Angeles, California, and resolution of Claim No. 4-1 (secured \$1.6 million).

Consent to final order and judgments: AME Zion (denomination); AME Zion (local church); Chicago Title (by implication) and trustee Golden.

Non-consent: Jeffrey Scott Bleeker, Lance Evic, and Lisa Motes.

Unknown: Sheila Quintana.

The parties are asked to confirm consent or lack of consent and, in the case of Sheila Quintana, affirmative consent or not consent.

Jury Trial

Except the fourth and fifth causes of action of the Bleeker cross-complaint, there appears to be no right to jury trial. The parties are asked to confirm this understanding.

Scheduling Orders

At the continued status conference, the court intends to issue a scheduling order for at least Phase I, and possibly all phases, is appropriate and the parties should be prepared to address those issues.

2. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2050](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [1](#)

GOLDEN V. AMEY ENTERPRISES LLC
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m. to allow the entry of default and prove up the default judgment against the defendant. If a judgment or dismissal has not been docketed, not later than 14 days prior to the continued hearing, the plaintiff shall file a status report. A civil minute order shall issue.

3. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2051](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [1](#)

GOLDEN V. FAIRWAY AMERICA, LLC
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to October 18, 2022, at 1:30 p.m. The parties shall not further enlarge time for an answer or motion without order of the court. Not later than 14 days prior to the continued status conference the parties shall file a joint status report. A civil minute order shall issue.

4. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2052](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [[1](#)]

GOLDEN V. GV/HI PARK TOWER
HOLDING, LLC ET AL
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m. to allow the entry of default and prove up the default judgment against the defendant. If a judgment or dismissal has not been docketed, not later than 14 days prior to the continued hearing, the plaintiff shall file a status report. A civil minute order shall issue.

5. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2053](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [[1](#)]

GOLDEN V. N.L. INVESTOR L.L.C.
DAVID GOODRICH/ATTY. FOR PL.

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

The status conference is continued to November 1, 2022, at 1:30 p.m. Not later than 14 days prior to the continued hearing, the plaintiff shall file a status report. A civil minute order shall issue.

6. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2054](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [[1](#)]

GOLDEN V. THE CHURCH ON THE
WAY
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m. to allow the entry of default and prove up the default judgment against the defendant. If a judgment or dismissal has not been docketed, not later than 14 days prior to the continued hearing, the plaintiff shall file a status report. A civil minute order shall issue.

7. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2055](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [[1](#)]

GOLDEN V. PATHFINDER
SOLUTIONS, LTD.
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m. to allow the plaintiff to make further efforts to serve the defendants. Not later than 14 days before the continued status conference the plaintiff shall file a status report. A civil minute order will issue.

8. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2056](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [[1](#)]

GOLDEN V. WELLS FARGO BANK,
NATIONAL ASSOCIATION
DAVID GOODRICH/ATTY. FOR PL.
ADVERSARY PROCEEDING DISMISSED: 9/8/22

Final Ruling

This case was dismissed on September 8, 2022. The Status Conference is concluded.

9. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2057](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [[1](#)]

GOLDEN V. CRUZ LANDSCAPING
DAVID GOODRICH/ATTY. FOR PL.

No Ruling

10. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2059](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [[1](#)]

GOLDEN V. THE WARTON GROUP,
LLC
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m. to allow the entry of default and prove up the default judgment against the defendant. If a judgment or dismissal has not been docketed, not later than 14 days prior to the continued hearing, the plaintiff shall file a status report. A civil minute order shall issue.

11. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2060](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [[1](#)]

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

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

No Ruling

12. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2061](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-28-2022 [[1](#)]

GOLDEN V. OMEGA GOLD
DEVELOPMENT GROUP, INC.
DAVID GOODRICH/ATTY. FOR PL.

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

The status conference is continued to November 1, 2022, at 1:30 p.m. Not later than 14 days prior to the continued hearing, the plaintiff shall file a status report. A civil minute order shall issue.

13. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2062](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. LEVY
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

This status conference is continued to October 18, 2022, at 1:30 p.m., by Order approving Stipulation signed September 14, 2022, ECF No. 9.

14. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2063](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. VYRAL POST LLC
DAVID GOODRICH/ATTY. FOR PL.
RESPONSIVE PLEADING

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

No Ruling

15. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2064](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. THE LODGE
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m. to allow the entry of default and prove up the default judgment against the defendant. If a judgment or dismissal has not been docketed, not later than 14 days prior to the continued hearing, the plaintiff shall file a status report. A civil minute order shall issue.

16. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2065](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. POWELL
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

This status conference is continued to October 4, 2022, at 1:30 p.m. by Summons Reissued on August 25, 2022, ECF No. 6.

17. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2066](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. POWELL
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

This status conference is continued to October 4, 2022, at 1:30 p.m.
by Summons Reissued on August 25, 2022, ECF No. 6.

18. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2067](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. POWELL
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

This status conference is continued to October 4, 2022, at 1:30 p.m.
by Summons Reissued on August 25, 2022, ECF No. 6.

19. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2069](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. RAMIREZ
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m.
It does not appear the summons and complaint have been served. Not
later than 14 days hence, the plaintiff will cause a re-issued
summons to be issued and serve the summons. The Clerk of the Court
will set a status conference on December 6, 2022. A civil minute
order shall issue.

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

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. JERRY C.
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to November 1, 2022, at 1:30 p.m. Not later than 14 days prior to the continued date the parties shall file a joint status report. A civil minute order shall issue.

21. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2071](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. CRUZ
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m. to allow the entry of default and prove up the default judgment against the defendant. If a judgment or dismissal has not been docketed, not later than 14 days prior to the continued hearing, the plaintiff shall file a status report. A civil minute order shall issue.

22. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2072](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. BRONSON
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

This status conference is continued to October 4, 2022, at 1:30 p.m. by Summons Reissued on August 25, 2022, ECF No. 6.

23. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2073](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. CRIBB
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

This status conference is continued to October 4, 2022, at 1:30 p.m.
by Summons Reissued on August 25, 2022, ECF No. 6.

24. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2074](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. BAILEY
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m.
to allow the entry of default and prove up the default judgment
against the defendant. If a judgment or dismissal has not been
docketed, not later than 14 days prior to the continued hearing, the
plaintiff shall file a status report. A civil minute order shall
issue.

25. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2075](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. SUNTRUST BANK
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m.
to allow the entry of default and prove up the default judgment
against the defendant. If a judgment or dismissal has not been
docketed, not later than 14 days prior to the continued hearing, the
plaintiff shall file a status report. A civil minute order shall
issue.

26. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2076](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. LIVINGSTONE COLLEGE
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

The status conference is continued to December 6, 2022, at 1:30 p.m. to allow the entry of default and prove up the default judgment against the defendant. If a judgment or dismissal has not been docketed, not later than 14 days prior to the continued hearing, the plaintiff shall file a status report. A civil minute order shall issue.

27. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2077](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. BANK OF BARODA, NEW
YORK BRANCH
DAVID GOODRICH/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling

28. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2078](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [[1](#)]

GOLDEN V. BANK OF AMERICA,
NATIONAL ASSOCIATION
DAVID GOODRICH/ATTY. FOR PL.

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

The status conference is continued to October 18, 2022, at 1:30 p.m. to allow an answer to be filed. A civil minute order will issue.

29. [22-20063](#)-A-13 **IN RE: NATHANIEL SOBAYO**
[22-2032](#) [BPC-1](#)

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF
REMOVAL
7-21-2022 [\[13\]](#)

SOBAYO V. WELLS FARGO BANK,
N.A. ET AL
UNKNOWN TIME OF FILING/ATTY. FOR MV.

Tentative Ruling

Matter: Dismiss Adversary Proceeding Complaint

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

Disposition: Granted in part without leave to amend; denied in part

Order: Civil minute order

Defendants Well Fargo Bank et al. ("Wells Fargo defendants") to dismiss Plaintiff Nathaniel Sobayo's ("Sobayo") complaint against them. Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012. Sobayo opposes the motion or, in the alternative, seeks a 120 day continuance. Subsequent to the filing of this motion, the court dismissed Sobayo's Chapter 13 petition. That dismissal deprives this court of jurisdiction over the complaint, except for the stay violation cause of action and, except as to that cause of action, the complaint will be dismissed.

FACTS

At some point prior to January 2022, Sobayo became the owner of 2112 Lincoln Street, East Palo Alto, California. Complaint 3:4-9, ECF No. 1. That property was subject to a deed of trust in favor of one, or more, of the Wells Fargo defendants. *Id.* at 11.

Though less than entirely clear, it appears that the Wells Fargo defendants agreed to a loan modification agreement. *Id.* at 4:18-23, 5:8-12. Sobayo contends that the Wells Fargo defendants then went back on their modification and did so without just cause. *Id.* at 4:21-23.

In January 2022, Sobayo filed a Chapter 13 bankruptcy.

On June 1, 2022, the Wells Fargo defendants sent Sobayo a demand for payment. *Id.* at 2:1-2. Sobayo described that demand thusly, "On June 1, 2022, defendants sent plaintiff a Notice of default/Intent to File Motion for In re Relief from the Automatic Stay and Relief from Co-Debtor."

On June 3, 2022, Sobayo filed this adversary proceeding, described as "Complaint Seeking Contempt for willful Violation of the Automatic Stay." *Id.* The complaint alleges violations of the Truth

in Lending Act, Real Estate Settlement Procedures Act, California Business and Professions Code, Federal Trade Commission Regulations, and the California Unfair and Deceptive Business Practices Act. In expressly pleads fourteen causes of action: negligence, breach of fiduciary duty, fraud, "breach of duty to be honest and truthful," breach of contract, cancellation of voidable contract, slander of title, cancellation of assignment of deed of trust, quiet title, violation of Civil Code § 2924, violation of Business and Professions Code § 17200 et seq., specific performance, declaratory relief and preliminary and permanent injunction. The title of the complaint and the first paragraph also plead, albeit less explicitly, a claim for violation of the stay.

Sobayo never confirmed a Chapter 13 plan. In September 2022, this court granted the Chapter 13 trustee's motion to dismiss the Chapter 13 case.

PROCEDURE

Defendants Well Fargo Bank et al. ("Wells Fargo defendants") to dismiss Plaintiff Nathaniel Sobayo's ("Sobayo") complaint against them. Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012. The Wells Fargo Bank defendant's focus their motion on 14 state and/or federal common law and statutory actions in the complaint; they do not a less explicitly plead cause of action for violation of the stay. Mem. P.&A., ECF No. 15. Sobayo opposes the motion or, in the alternative, seeks a 120 day continuance.

JURISDICTION

Federal courts must rise jurisdiction wherever and whenever they appear. Fed. R. Civ. P. 12(h)(3). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." *Id.*

Bankruptcy courts are courts of limited jurisdiction. The limits of that jurisdiction are set forth in title 28:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of *all civil proceedings arising under title 11, or arising in or related to cases under title 11....*

28 U.S.C. § 1334 (emphasis added).

In most cases, District Court jurisdiction over bankruptcy matters is delegated to the bankruptcy court. 28 U.S.C. § 157.

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b) (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to--

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

...

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

28 U.S.C. § 157.

As this court said several years ago:

Bankruptcy jurisdiction extends to cases and to proceedings "arising under," "arising in" or "related to" cases under title 11. 28 U.S.C. § 1334(a), (b). Proceedings "arising under" title 11 "involve a cause of action created or determined by a statutory provision of title 11." *Harris v. Wittman (In re Harris)*, 590 F.3d 730, 737 (9th Cir. 2009). "A civil proceeding 'arises in' a Title 11 case when it is not created or determined by the bankruptcy code, but where it would have no existence outside of a bankruptcy case." *Harris v. Wittman (In re Harris)*, 590 F.3d 730, 737 (9th Cir. 2009) (citation omitted). The test for determining "related to" jurisdiction is "whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Fietz v. Great W. Sav. (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988)

(emphasis omitted) (citation omitted) (internal quotation marks omitted). "An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.*

In re Morrow, No. 08-13656-A-7, 2018 WL 6584287, at *1 (Bankr. E.D. Cal. Dec. 11, 2018).

Here, except for the stay violation action, all causes of action are non-core. *Id.* Since the Chapter 13 case has been dismissed, the state/federal non-bankruptcy causes of action can no longer impact the "the handling and administration of the bankruptcy estate." *Fietz v. Great W. Sav. (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988). As a result, the court lacks jurisdiction over all causes of action, except the stay violation.

In contrast, stay violations are core and jurisdiction over those cause of action survives dismissal.

[A]ctions asserting stay violations, as the underlying action here, are core proceedings. *Id.* § 157(b)(2)(A), (G), (O); compare *In re Goodman*, 991 F.2d 613, 616-17 (9th Cir. 1993) (stay-violation actions arising under the Bankruptcy Code), with *Rosner v. Worcester (In re Worcester)*, 811 F.2d 1224, 1229 n. 5 (9th Cir. 1987) (proceedings related to foreclosure sale's validity arising from state-created rights).

In re Oakhurst Lodge, Inc., 582 B.R. 784, 791 (Bankr. E.D. Cal. 2018)

STAY VIOLATIONS

The Wells Fargo defendants move to dismiss the complaint in its entirety under Rule 12(b)(6). The standards of Rule 12(b)(6) are well-known to this court.

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).

Here, the Wells Fargo defendants have not addressed the stay violation cause of action. Mem. P. & A. ECF No. 15. Ninth Circuit law is clear that the violation survives the discharge. *In re Davis*, 177 B.R. 907, 911-912 (9th Cir. BAP 1995); *In re Johnson*, 390 B.R. 414, 419 (10th Cir BAP 2008). The elements of a contempt action for stay violation are simple: (1) the existence of the stay, 11 U.S.C. § 362(a); (2) an act in violation of that stay; and (3) the creditors knowledge of the bankruptcy, *Matter of Hailey*, 621 F.2d 169, 172 (5th Cir. 1980); *Matter of Carter* 691 F.2d 390, 391 (8th Cir. 1982). The first element, a bankruptcy, has been plead. Comp. 4:24-28. The second element, an act in violation of the stay, is also present. Demands for payment are violations of the stay. *In re Hines*, 147 F.3d 1185, 1188 (9th Cir. 1998). At least some of the Wells Fargo defendants had knowledge of the stay. Claim 11-1, filed March 7, 2022. As a result, Sobayo has plead a cause of action for contempt for violation of the stay and, as to that portion of the complaint the motion will be denied.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Wells Fargo Bank et al.'s motion has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that except as provided herein, the complaint is dismissed for lack of jurisdiction;

IT IS FURTHER ORDERED that as to any claim for violation of the stay, 11 U.S.C. § 362, the motion is denied;

IT IS FURTHER ORDERED that except as provided herein, the motion is denied; and

IT IS FURTHER ORDERED that defendants shall file an answer note later than October 24, 2022.

30. [22-20063](#)-A-13 **IN RE: NATHANIEL SOBAYO**
[22-2032](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-3-2022 [[1](#)]

SOBAYO V. WELLS FARGO BANK,
N.A. ET AL
NATHANIEL SOBAYO/ATTY. FOR PL.

No Ruling