

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, December 1, 2021
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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, **and all parties will need to appear at the hearing unless otherwise ordered.** 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.

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.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [21-12008](#)-B-13 **IN RE: CELESTE MURILLO**
[JV-1](#)

MOTION TO CONFIRM PLAN
10-14-2021 [\[18\]](#)

CELESTE MURILLO/MV
JASON VOGELPOHL/ATTY. FOR DBT.
WITHDRAWN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor Celeste Lucia Murillo withdrew this motion to confirm plan on October 25, 2021. Doc. #22. Accordingly, this matter will be DROPPED FROM CALENDAR.

2. [19-13822](#)-B-13 **IN RE: SALVADOR PULIDO**
[TCS-4](#)

MOTION TO REFINANCE
11-8-2021 [\[82\]](#)

SALVADOR PULIDO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Salvador Pulido ("Debtor") seeks authority to refinance the loan on his primary residence located at 1366 Linda Mesa Drive, Madera, CA 93638 ("Property"). Doc. #82. Property is currently encumbered by a first priority deed of trust in favor of HomeStreet Bank ("Creditor") in the amount of \$220,454.00. Doc. #21, *Am. Sched. D*.

This motion will be DENIED WITHOUT PREJUDICE for failing to comply with the Local Rules of Practice ("LBR").

For motions filed on less than 28 days' notice, but at least 14 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify the respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion, and if presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

Here, the motion was served on November 5, 2021, filed on November 8, 2021, and set for hearing on December 1, 2021. Doc. #86. November 5 and 8, 2021 are 26 and 23 days, respectively, before December 1, 2021. Therefore, this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated:

YOU ARE HEREBY NOTIFIED that pursuant to Local Rule of Bankruptcy Practice 9014(f)(1), opposition, if any, to the Court granting this Motion, shall be in writing and shall be served and filed with the Clerk by the Responding Party not less than Fourteen Calendar Days (14) preceding the date or continued date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations. Without good cause, no party shall be heard in opposition to the motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the Motion without further argument or may result in the imposition of sanctions.

Doc. #83, at 1-2 (emphasis in original). This is incorrect. Because the hearing was set on 14 days' notice, the notice should have included LBR 9014-1(f)(2)(C) language, stating that no written opposition was required and may be presented at the hearing.

The court notes that the motion was properly filed with at least 21 days' notice pursuant to Fed. R. Bankr. P. 2002(a)(2), but the correct language under LBR 9014-1(f)(1) or (f)(2) is still required.

Accordingly, the motion is DENIED WITHOUT PREJUDICE.

3. [21-11822](#)-B-13 **IN RE: MARIA PAREDES**
[PBB-1](#)

CONTINUED MOTION TO CONFIRM PLAN
9-21-2021 [\[24\]](#)

MARIA PAREDES/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Maria De La Luz Paredes ("Debtor") seeks confirmation of her First
Modified Chapter 13 Plan. Doc. #24.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected
pursuant to 11 U.S.C. § 1325(a)(6) because Debtor will not be able to
make all payments under the plan and comply with the plan. Doc. #33.

This matter was continued from October 27, 2021 so that Debtor could
file and serve a written response to Trustee's opposition not later
than November 17, 2021 or file a modified plan not later than November
24, 2021. Docs. ##35; #38.

Trustee objects to the language used in Section 7, referencing Section
3.07(c): "Post-petition arrearage due to Pennymac for August and
September 2021 have been added to the pre-petition arrearage."
Instead, Trustee contends that the post-petition arrearages will need
to be treated as a separate claim. Trustee suggests striking the
quoted language and replacing it with the following: "Post-petition
arrearage due to Pennymac for August and September 2021 will be paid
through the Plan by Month 60." Doc. #33.

Debtor replied to Trustee's opposition on October 27, 2021. Doc. #36.
Debtor does not oppose Trustee's suggested changes. Debtor is
agreeable to striking the current language in Section 7 and replacing
it with Trustee's proposed language. *Id.*

In response, the parties stipulated to resolve Trustee's objection by
incorporating the suggested language. Docs. ##40-41. As result,
Trustee withdrew the objection.

No other parties in interest opposed and the defaults of all non-
responding parties except Trustee were entered on October 27, 2021.
Doc. #35. The court will GRANT the motion. The confirmation order
shall include the docket control number of the motion and it shall
reference the plan by the date it was filed.

4. [21-12135](#)-B-13 **IN RE: GUSTAVO ALVAREZ TORRES**
[PLG-1](#)

MOTION TO CONFIRM PLAN
10-14-2021 [\[20\]](#)

GUSTAVO ALVAREZ TORRES/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party will submit a proposed order in
conformance with the ruling below

Gustavo Alvarez Torres ("Debtor") seeks confirmation of the First
Amended Chapter 13 Plan. Doc. #20.

This motion was set for hearing on 35 days' notice as required by
Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the
creditors, the chapter 13 trustee, the U.S. Trustee, or any other
party in interest to file written opposition at least 14 days prior to
the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver
of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*,
46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not
materially alter the relief requested by the moving party, an actual
hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592
(9th Cir. 2006). Therefore, the defaults of the above-mentioned
parties in interest are entered and the matter will be resolved
without oral argument. Upon default, factual allegations will be taken
as true (except those relating to amounts of damages). *Televideo Sys.,
Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional
due process requires that a plaintiff make a *prima facie* showing that
they are entitled to the relief sought, which the movant has done
here.

This motion will be GRANTED. The confirmation order shall include the
docket control number of the motion and it shall reference the plan by
the date it was filed.

5. [21-10143](#)-B-13 **IN RE: GUILLERMO/ELA ALVARADO**
[RSW-2](#)

MOTION TO SELL
10-29-2021 [\[47\]](#)

ELA ALVARADO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

Guillermo Alvarado and Ela Melissa Alvarado ("Debtors") seek authorization to sell their leased 2018 Toyota Prius Prime ("Vehicle") to their son under 11 U.S.C. § 363. Doc. #47. The purchase price is the "purchase option amount" under a lease, \$14,700.00. The lease matures "shortly." *Id.*

No party in interest opposes.

This motion was filed on 28 days' notice under Local Rule of Practice 9014-1(f)(1) and will proceed as scheduled.

As a procedural matter, no statutes or case law are cited, other than a single reference to 11 U.S.C. § 363 in the motion.

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore, the debtor has the authority to sell estate property under § 363(b).

Here, it appears that Debtors are attempting to sell the option to purchase Vehicle. Guillermo Alvarado declares that Vehicle was leased in 2018 and will mature later this year. Doc. #49. Debtors' son will pay the "payoff amount" of \$14,700, plus costs of sale, which Debtors believe represents a fair and reasonable price. *Id.* "He will pay all cash, as he is getting a new loan for the purchase." *Id.*

The motion further states that the Debtors are current on their chapter 13 plan, which provides for a 25% distribution to unsecured creditors. Doc. #47. No other information is provided.

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N.*

Brand Partners), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" *Id.* citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to Debtors' son, who is undoubtedly an insider.

Vehicle is listed in the petition with a value of \$0.00 because it is leased. Doc. #39, *Am. Sched. A/B*. But if there is an option to purchase Vehicle contained in the lease, does that option have any value to the estate? Would the value of the option then be the difference between the replacement value of the vehicle and the option-price, which appears to be \$14,700 here?

It is unclear whether any proceeds of the sale are going to the estate, and whether the proposed sale is intended to be subject to higher and better bids. No bidding procedure is included in the motion.

Nevertheless, the trustee did not oppose. And under 11 U.S.C. § 365(p)(1), if a lease of personal property is rejected or not timely assumed by the trustee, the leased property is no longer property of the estate and the stay under § 362 is automatically terminated. The trustee may assume the lease within 60 days from the commencement of the case or the lease will be deemed rejected under § 365(d)(1).

Here, Debtors filed bankruptcy on January 25, 2021. Doc. #1. The trustee had until March 26, 2021 to assume the lease. Since it was not assumed, the lease was deemed rejected and the leased property is no longer property of the estate.

This matter will be called as scheduled to inquire about the missing details of the sale. Since the Vehicle's lease is deemed rejected and no longer property of the estate, the court may grant this motion.

6. [18-11872](#)-B-13 **IN RE: LAURIE BUDRE**
[FW-8](#)

MOTION TO MODIFY PLAN
10-12-2021 [\[153\]](#)

LAURIE BUDRE/MV
GABRIEL WADDELL/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Laurie Michelle Budre ("Debtor") seeks an order confirming the Fifth Modified Chapter 13 Plan. Doc. #153. Debtor wishes to extend the duration of her plan from 60 to 84 months under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the enactment of the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021).

Here, Debtor faced material financial hardship directly or indirectly caused by the COVID-19 pandemic. Doc. #156. Debtor lost her job in April 2020 and received unemployment through September 2021, but there were many months that she did not receive income. The unemployment has run out, causing Debtor to fall behind on plan payments.

Debtor also states that her previous plan payment relied on payment of \$500 per month for real property located at 49794 House Ranch Road, O'Neals, CA 93645. Debtor's tenant moved out approximately one year ago. The lost rental income was to be paid by Debtor's sons as a fee for storage of items at the property, but both lost their jobs due to the COVID-19 pandemic and were unable to pay the full amount for a lengthy period. One of those sons has been able to return to work, so Debtor anticipates he will start paying the full amount in November 2021. *Id.*

Additionally, Debtor's real property located at 210 Mill Street, Greenville, CA 95947 burned down in August 2021. Debtor lost income from that property and does not anticipate receiving any income from that property in the foreseeable future. *Id.*

Debtor's previous plan (Doc. #127) was confirmed on July 10, 2020, which is before the COVID-19 Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #142. Debtor satisfies the requirements to extend the plan beyond 60 months under § 1329(d).

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

7. [21-11590](#)-B-13 **IN RE: JUAN PENA**
[LE-1](#)

MOTION TO CONFIRM PLAN
10-18-2021 [\[30\]](#)

JUAN PENA/MV
LALEH ENSAFI/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Juan Pena, Jr. ("Debtor") seeks an order confirming the First Modified Plan. Doc. #30.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed pursuant to 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #41. Trustee says that the plan as proposed will take more than 63 months to fund at the current plan payment. However, the plan could fund over 60 months if Debtor increased the plan payment from \$2,103 to \$2,160

per month and paid \$114 to cover the payment change difference paid through October 2021.

Debtor responded, agreeing to increase the plan payment and pay the difference. Doc. #41.

This is Debtor's second attempt to confirm this plan. The first attempt was denied without prejudice on September 29, 2021 due to other procedural issues. Docs. ##28-29. The court notes that Debtor cured those issues. Trustee made the same objection to the previous confirmation attempt and Debtor replied, agreeing to make the changes suggested in Trustee's initial opposition. Doc. #25.

This motion will be DENIED WITHOUT PREJUDICE for failing to comply with the Federal Rules of Bankruptcy Procedure ("Rules") and Local Rules of Practice ("LBR").

The U.S. Department of Agriculture ("USDA") Rural Development Agency ("RDA") was not properly served or notified as required by LBR 3015-1(d)(1) and Rule 2002(a)(9). The RDA is a secured creditor listed in Class 1, so a debt is owed to the United States. The RDA must be served in accordance with Rule 2002(j)(4).

Insufficient Notice

LBR 3015-1(d)(1) applies to modified plans proposed prior to confirmation pursuant to 11 U.S.C. § 1323 and requires the debtor to file and serve the modified plan together with a motion to confirm it. Notice of the motion shall comply with Rule 2002(a)(9) and LBR 9014-1(f)(1).

Rule 2002(a)(9) requires 21 days' notice to creditors, the trustee, and other parties in interest of the time fixed for filing objections to confirmation of a chapter 13 plan. LBR 9014-1(f)(1) requires 28 days' notice of the hearing and notice that opposition must be filed 14 days prior to the hearing. To comply with both Rule 2002(a)(9) and LBR 9014-1(f)(1), motions to confirm a plan must be filed with at least 35 days' notice before the hearing. LBR 3015-1(d)(1).

Here, Debtor filed a separate certificate of service for each document. This is not fatal, but the court notes that multiple documents and pleadings related to a single matter with the same Docket Control number may be included in one proof of service. See, LBR 9014-1(e)(3).

Those certificates of service indicate that Debtor served the U.S. Department of Agriculture ("USDA") Rural Development Agency ("RDA") at the following address:

USDA RURAL DEVELOPMENT; PO BOX 66879; Saint Louis, MO 63166

Docs. ##33-36; #40; #44.

Rule 2002(j)(4) requires the debtor to mail copies of the notice to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted. Rule 2002(j)(4).

For cases assigned to the Modesto and Fresno divisions, the address for the U.S. Attorney shall include, in parentheses, the name of the federal agency as follows:

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721

LBR 2002-1(a)(2).

Certain federal and state agencies specify particular addresses to which notice of bankruptcy proceedings shall be directed. This list is maintained by the Clerk of the Bankruptcy Court and can be located on the court's website. Form EDC 2-785, *Roster of Governmental Agencies*.¹ RDA is not on this address list, but the USDA Farm Service Agency, a different USDA agency, has an address at 430 G Street, #4161, Davis, CA 95616-4161.

After investigating whether the PO Box address used by Debtor will satisfy the due process requirements of adequate notice to RDA, it appears that the address used is for RDA's Customer Service Center for "borrower inquiries."² *In re Ass'n of Volleyball Prof'ls*, 256 B.R. 313, 320 (Bankr. C.D. Cal. 2000), citing *Boykin v. Marriott Int'l, Inc. (In re Boykin)*, 246 B.R. 825, 828-29 (Bankr. E.D. Va. 2000).

RDA has a California state office,³ with an Acting State Director:

Patty Gerald, Acting State Director
430 G Street, #4169
Davis, CA 95616-4169

The RDA state office address appears to be located in the same building as the Farm Service Agency. According to the same contact page, there are also local offices located in Fresno and Bakersfield:

Fresno Office
4625 W. Jennifer St., Suite 126
Fresno, CA 93722

Bakersfield Office
5080 California Ave., Suite 150
Bakersfield, CA 93309

Id. Additionally, RDA is part of the USDA. Thomas J. Vilsack is the current Secretary of Agriculture.⁴ The USDA headquarters mailing address is:

U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

USDA "Contact Us."⁵

So, service of the motion, plan, and notice of hearing was not properly effectuated on the USDA as required by LBR 3015-1(d)(1), Rule 2002(a)(9), and (j)(4). Not all of these addresses need to be served, but Debtor should serve the Acting State Director and Secretary of Agriculture, as well as the United States Attorney for this district.

Second, the original notice of hearing was served on October 18, 2021, which is more than 35 days before the hearing. Doc. #31. That notice contained the wrong hearing date, so notice of the deadline for the time fixed to file objections to the plan was insufficient. The amended notice of hearing to correct the hearing date was filed on November 1, 2021. Doc. #39. This is only 30 days before the hearing. Accordingly, notice of the time fixed for filing objections to the chapter 13 plan was not served at least 35 days before the hearing in violation of LBR 3015-1(d)(1), 9014-1(f)(1), and Rule 2002(a)(9).

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

¹ *Roster of Governmental Agencies*, Form EDC 2-785 (Rev. Dec. 12, 2020), <http://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.002-785.pdf> (Nov. 29, 2021).

² Customer Service Center, Rural Development, U.S. Dept. of Agriculture, <https://www.rd.usda.gov/about-rd/offices/customer-service-center> (Nov. 29, 2021).

³ California State Office, Rural Development, U.S. Dept of Agriculture, <https://www.rd.usda.gov/contactpage/california-contacts> (Nov. 29, 2021).

⁴ Secretary of Agriculture Tom Vilsack, U.S. Dept. of Agriculture, <https://www.rd.usda.gov/contactpage/california-contacts> (Nov. 29, 2021).

⁵ Contact Us, Location, U.S. Dept. of Agriculture, <https://www.rd.usda.gov/contactpage/california-contacts> (Nov. 29, 2021).

11:00 AM

1. [17-14112](#)-B-13 IN RE: ARMANDO NATERA
[20-1035](#) [TAT-4](#)

MOTION TO DISMISS SUPPLEMENTAL COMPLAINT
10-29-2021 [[192](#)]

NATERA V. BARNES ET AL
THOMAS TRAPANI/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied. Movants to answer supplemental complaint within 14 days of entry of order.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

Co-defendants Roger L. Ward and Sandra S. Ward ("Movants" or the "Wards") ask to have the supplemental complaint dismissed under Federal Rule of Civil Procedure ("Civil Rule") 12(b)(6). Doc. #192.

Plaintiff Armando Natera ("Plaintiff" or "Natera") opposes. Doc. #213.

The Wards reply. Doc. #221.

This motion will be DENIED.

The motion was filed on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

As a preliminary matter, the court notes that the Wards used the same Docket Control Number ("DCN"), TAT-4, for both their witness list and this motion. Docs. #176, #192.

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. Counsel is advised to review the local rules to ensure procedural compliance in subsequent matters. Failure to comply with the local rules may result in the motion being denied without prejudice.

1.

Two years ago, the Tulare County Superior Court awarded a judgment in the Wards' favor against Natera for unpaid rent and other damages in excess of \$18,000. The judgment included a declaration about Wards'

ability to remove a mobile home where Natera formerly resided. The real property on which the mobile home sat was foreclosed by Wards' predecessor in interest. The property is described as 2430 Orrland Ave. Pixley California ("Foreclosed Property").

This adversary proceeding alleges the Wards and their co-defendants willfully violated the automatic stay. This court awarded Natera and his counsel an expense reimbursement of about \$2,800 against the Wards and their counsel for a discovery dereliction. After Natera's counsel received the ordered payment, the Wards' counsel caused a Notice of Levy and garnishee documents to be served on Natera's counsel enforcing the Wards' judgment.

Then, Natera sought leave to serve a supplemental complaint, including allegations about the Superior Court judgment and levy attempt. The court allowed the supplemental complaint. Doc. #188. Natera's syllogism supporting the supplemental allegations is: (a) Natera's bankruptcy filing in October 2017 initiated the automatic stay voiding actions violating the stay; (b) the foreclosure sale occurred after the filing of Natera's bankruptcy and before its dismissal; therefore, (c) the foreclosure was void. So, (d) all subsequent transfers of Foreclosed Property are invalid including how the Wards received title.⁶

The Wards make three arguments. First, this court is barred by the *Rooker-Feldman* doctrine from entertaining the supplemental allegations because this court must find the Superior Court wrongfully awarded relief including monetary damages to them which is improper review of the Superior Court. Second, the court is barred by claim preclusion since Natera did not raise his dismissed bankruptcy or the stay in the Superior Court litigation. Third, the Superior Court properly entered the judgment in the Wards' favor because Natera's bankruptcy was dismissed when the judgment was entered.

2.

We first briefly address the standards on this motion. Then, the Wards' arguments will be addressed.

A.

To survive a motion to dismiss under Civil Rule 12(b)(6) "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, 570 (2007). A court should assume the veracity of the factual allegations "and then determine whether they plausibly give rise to an entitlement of relief." *Iqbal*, 556 U.S. at 679. This plausibility standard is not a probability requirement, but it does ask for more than a mere possibility; if a complaint pleads facts "merely consistent with" a theory of liability it falls short of "the line between possibility and plausibility." *Id.* at 678 (quoting *Twombly*,

550 U.S. at 557). The court is not bound to accept as true a legal conclusion couched as a factual allegation. *Id.*

Accepting the veracity of the factual allegations in the supplemental complaint, the Wards' title is at the end of a string of transfers, the first of which may have been from a grantor with no legal right to ownership because of a foreclosure sale violating the automatic stay. The Wards argue the foreclosure sale did not include the mobile home so that action is not subject to the stay. As will be seen, the Wards' challenge to Natera's pleading do not change the basic allegations in this action. Those allegations, if true, state a plausible claim.

B.

In their reply (Doc. #221 2:15-16), the Wards admit that Barnes acquired Foreclosed Property at a sale "when the bankruptcy action was pending." Thus, all actions taken in violation of the stay which arose upon the filing are void. *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1083 (9th Cir. 2000), citing *Schwartz v. U.S. (In re Schwartz)*, 954 F. 2d 569, 571 (9th Cir. 1992). This clarifies and limits what Natera is alleging here.

I.

Rooker-Feldman is not implicated here. Natera is not asking the court to challenge the validity of the mobile home judgment. Rather, the allegations establish a causal basis for damages Natera claims under § 362(k). Natera may not succeed in that endeavor. But that is not at issue now.

A bankruptcy court simply does not conduct an improper appellate review of a state court when it enforces an automatic stay that issues from its own federal statutory authority. *Gruntz*, 202 F. 3d at 1083. "Because only an order of the bankruptcy court can authorize any further progress in the stayed proceedings, it follows that the continuation of the [stayed] proceedings can derive legitimacy only from the bankruptcy court order." *Noli v. Cm'n'r of Internal Revenue*, 860 F.2d 1521, 1525 (9th Cir. 1988). The Superior Court here entered a judgment after Natera's case was dismissed. It had jurisdiction to do so, but that does not mean the judgment impliedly annulled the automatic stay that arose when Natera filed the bankruptcy petition. The federal courts have the final authority to determine the scope and applicability of the automatic stay. *Gruntz*, 202 F. 3d at 1083.

Nor are the issues in this adversary proceeding "inextricably intertwined" with the Superior Court proceeding. Natera's claim here does not depend on whether the state court wrongly decided the issue before it. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (J. Marshall, concurring). The state court can be completely correct and Natera still has a claim. The extent of the damages he may claim, though are another issue.

II.

We similarly dispose of the Wards' second contention.⁷ There is no claim preclusion because the claim to damages for a stay violation was not before the Superior Court. It could not be. See *Gruntz*, 202 F.3d at 1083; *Griffin v. Wardrobe (In re Wardrobe)*, 559 F.3d 932, 934 (9th Cir. 2009). The Wards cite no authority that a debtor waives the protection of the automatic stay by not raising it as a defense in a state court action.

The authorities the Wards cite do not support the contrary. *Stratosphere Litig. L.L.C. v. Grand Casinos, Inc.*, 298 F.3d 1137, 1142-43 (9th Cir. 2002) (holding a confirmed plan barred a claim for breach of a funding commitment when the bankruptcy court previously found the commitment conditional and discharged); *In re Jensen-Edwards*, 535 B.R. 336, 344 (Bankr. D. Id. 2015) (holding post-petition challenge to validity of a security interest barred because of pre-petition state court ruling).

In sum, the Superior Court could not impliedly determine the scope of the automatic stay. Claim preclusion is inapplicable.

III.

Dismissal of Natera's bankruptcy case does not change the claim. To be sure, the stay terminated upon dismissal. § 362(c)(2)(B). The Superior Court heard the case and entered judgment thereafter. Nothing in § 349 annuls the stay upon dismissal. The chain of events here is not inconsistent with a damage claim for alleged willful violation of the stay arising while the bankruptcy case was pending. "By halting all collection efforts, the stay affords the debtor time to propose a re-organization plan, or simply to be relieved of financial pressures that drove him into bankruptcy." *In re Wardrobe*, 559 F. 3d at 934. Successful conclusion of the bankruptcy is not a requisite to a damage claim for stay violation.

Again, the Wards present no contrary authority. *Carl I. Brown & Co. v. Anderson (In re Anderson)*, 195 B.R. 87 (B.A.P. 9th Cir. 1996) (reversing an order setting a post-dismissal sale aside but holding related to need to notice of a continued sale date). In *Agha*, a foreclosure sale occurred 16 months after the bankruptcy case closed and four months before re-opening, which are not the facts here. *Agha v. Citimortgage, Inc.*, 10-16183-B-7, A.P. 13-1086; 2015 Bankr. LEXIS 530 (Bankr. E.D. Cal. Feb. 19, 2015). The bankruptcy court did remind us though "Defendants were absolutely prohibited from doing anything against the debtor or [the debtor's residence] as long as the automatic stay remained in effect." *Id.*, at *7.

The motion will be DENIED. The Wards shall file and serve an answer to the supplemental complaint within 14 days of entry of the order.

⁶ The premises of the syllogism are vigorously disputed.

⁷ The Wards did not discuss this or their next contention in their reply.

2. [20-12037](#)-B-7 **IN RE: GURDIAL SINGH**
[21-1017](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
3-30-2021 [[1](#)]

SALVEN V. SINGH
ANTHONY JOHNSTON/ATTY. FOR PL.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to January 12, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

Neither party filed pre-trial statements, but chapter 7 trustee James E. Salven ("Plaintiff") filed a motion to approve a settlement agreement with debtor Gurdial Singh ("Defendant") in the underlying bankruptcy case, Case No. 20-12037. ADJ-2. Accordingly, this pre-trial conference will be continued to January 12, 2021 at 11:00 a.m. to be heard after the motion to approve settlement agreement.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1123](#)

PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
12-19-2019 [[11](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. MEDLINE
MICHAEL WILHELM/ATTY. FOR PL.
VACATED ON 9/29/21 (DOC. #114)

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to February 9, 2022 at 11:00 a.m.

NO ORDER REQUIRED.

The court vacated this pre-trial conference on September 29, 2021. Docs. #113. Under the Third Scheduling Order, the pre-trial conference is set to be heard on February 9, 2022 at 11:00 a.m. Doc. #114.