UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, December 9, 2020
Place: Department B – Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. 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. 19-14108-B-13 **IN RE: JAMES WEST**
JHK-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-9-2020 [39]

FIRST INVESTORS FINANCIAL SERVICES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order in conformance with the ruling below.

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

First Investors Financial Services ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2011 Lincoln MKX ("Vehicle"). Doc. #39. Chapter 13 Trustee Michael H. Meyer ("Trustee") timely responded stating that the debtor has made payments totaling $650.00 since the motion was filed but will still be delinquent $108.99 if the November 2020 payment is made. Doc. #47. James West ("Debtor") did not oppose, and his default will be entered.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

Debtor filed bankruptcy on September 28, 2019. Doc. #1. Vehicle was the subject of a motion to value collateral, which was resolved by stipulation wherein the parties agreed that Vehicle was worth $5,855.00 on the date of the petition. *See* Doc. #28; TCS-1. Debtor subsequently confirmed his chapter 13 plan on March 9, 2020. Doc. #34. As part of the plan, Movant was listed as a Class 2(B)

creditor for claims reduced based on the value of collateral and was set to be paid a monthly dividend by the chapter 13 trustee ("Trustee"). *See* Doc. #2, ¶ 3.08. The chapter 13 plan requires Debtor to pay $215.00 per month to Trustee, *Id.*, ¶ 2.01.

As of October 23, 2020, Movant contends that Debtor is indebted to Movant in the sum of $19,813.76. Doc. #39, ¶ 6. At the time this motion was filed, Movant contended that Debtor was in default for a partial plan payment of $210.00 due August 25, 2020, and regular plan payments of $215 due September 25, 2020 through October 25, 2020, for a total of $640.00. *Id.*, ¶ 7. Since this motion was filed, Trustee has indicated that Debtor recently made the following payments:

(a) $430 on November 13, 2020;
(b) $215 on November 17, 2020; and
(c) $5 on November 18, 2020.

Doc. #47 at ¶ 4. These November payments totaled $650. If Debtor timely makes his November 2020 payment, Trustee will pay Movant a total of $566.04 at the end of November 2020, reducing the claim delinquency to $108.99. *Id.* at ¶ 5.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor is delinquent at least $108.99. *Ibid.* This matter will be called as scheduled to inquire whether Debtor has cured his delinquency.

Accordingly, if Debtor is still delinquent, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the collateral is a depreciating asset.

2. 17-10236-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
FW-10

MOTION TO MODIFY PLAN
10-27-2020 [193]

PAUL LANGSTON/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

This motion was filed on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1) and will proceed as a scheduling conference.

Paul Langston and Kathleen Langston (collectively "Debtors") filed this sixth modified plan for confirmation. Doc. #193. Chapter 13 Trustee Michael Meyer ("Trustee") and Creditor Victoria Geesman ("Creditor") timely objected. Doc. #201; #203. This is Trustee's fourth objection and Creditor's sixth objection to plan confirmation.

Debtors filed this plan modification due to a higher deduction of Mr. Langston's retirement payments under the Federal Employees Retirement System ("FERS") from the Office of Personnel Management ("OPM"). Doc. #195, ¶ 4. Debtors' previous plan was based on OPM withholding 35.833% for payment to Creditor in compliance with the Qualified Domestic Relations Order ("QDRO") entered in their divorce proceeding that awarded ongoing payments to Creditor as a Domestic Support Obligation ("DSO") with previous amounts due as DSO arrears. *Id.*, ¶ 2. As of the October 1, 2020 payment, OPM is now reducing Debtors' net annuity to just $8.73 per month and he claims to no longer be able to afford his required plan payments. *Id.*, ¶¶ 4-6; #196, Ex. D.

Trustee objects on the following bases: (1) the plan fails to provide for submission of all or such portion of future earnings and income to the supervision and control of the Trustee under 11 U.S.C. § 1322(a); (2) Debtors will not be able to make all payments and comply with the plan under 11 U.S.C. § 1325(a)(6), and (3) the plan fails to provide for the full payment of all claims entitled to priority under 11 U.S.C. § 1322(a). Doc. #201.

Trustee states that he has paid $67,741.86 to Creditor to date under previous plans. *Id.*, 2. Quoting section 7.07 subparagraph (6) of the sixth proposed plan, which provides for a final payment to Creditor for DSO arrears in January 2021, Trustee takes issue with Debtors' unilateral determination that the arrears will have been paid under the QDRO. *Ibid.* In response, Trustee contends that it is the proof of claim, not the plan, that shall determine the amount and classification of a claim and on these grounds, Trustee has not paid the pre-petition domestic support obligation in full with interest, nor has Creditor filed a Notice of Satisfaction of Claim, and therefore Trustee must continue making payments to Creditor until the claim is paid in full or satisfied. *Ibid.*

Creditor objects on grounds that the plan repeats earlier attempts to "collaterally attack" the QDRO that assigned 100% of Debtors' FERS net annuity to Creditor. Doc. #203, ¶ 1; *see also* Doc. #90, ¶ 8. Creditor quotes this court's September 28, 2017 minutes denying Debtors' second modified plan, where we explained that the court is without jurisdiction to interpret or apply the provisions of the QDRO. Doc. #109; #203. Creditor contends that the sixth modified plan attempts to expropriate her property for the purpose of repaying DSO arrears by converting net annuity amounts Debtors are required to forward Creditor within ten days into payments on the DSO arrears. *Id.*, ¶¶ 4-6 citing *Gendreau v. Gendreau (In re*

Gendreau), 122 F.3d 815, 819 (9th Cir. 1997). Further, Creditor claims that the DSO arrearage owed is $83,994.58 and Debtors have only paid 35.4% of the total DSO arrearage. *Id.*, ¶¶ 7-8.

Debtors filed a response claiming that the sixth modified plan is proposed only because Debtors can no longer afford the plan payments due to OPM's reduction in the amount it is paying to Mr. Langston directly for his retirement. Doc. #207, ¶ 1. Debtors argue Creditor's objection is based on two incorrect factual arguments: Debtors are seeking to include provisions previously denied by this court and Debtors are seeking to convert amounts owed to Creditor. *Id.*, ¶ 2. First, Debtors claim the sixth modified plan "largely repeats provisions" of the fifth modified plan, with adjustments based on the change in OPM's direct payments to Creditor. *Id.*, ¶ 3. Second, Debtors claim they are not seeking a determination as to when the DSO arrearage is cured but will seek this determination in the future from the Family Law court. *Id.*, ¶ 4. Debtors liken Creditor's objection to a contention that Creditor is entitled to 100% of the net OPM amount in perpetuity as her separate property. *Id.*, ¶ 5. Debtors argue the assignment of the net amount is only temporary until the QDRO is amended. *Id.*, ¶ 6. Debtors state they will seek this determination in Family Law court, but need to modify a plan now to avoid "double pay[ing] the arrearage amounts owed to [Creditor]" because she would be paid both directly by OPM and through the current chapter 13 plan if it is not modified. *Id.*, ¶¶ 8-9. Further, Debtors cite to their amended Schedules I and J as illustration that they cannot afford to maintain the current plan payment. *Ibid.* Unfortunately, the proposed modified plan *presumes* a favorable result for co-debtor in the Family Law court.

This court has previously emphasized its reluctance in interpreting or applying the QDRO. The Supreme Court has cautioned against involvement of the federal courts in family law affairs:

> One of the principal areas in which this Court has customarily declined to intervene is the realm of domestic relations. Long ago we observed that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not the laws of the United States." *In re Burrus*, 136 U.S. 586, 593, 34 L. Ed. 500, 10 S. Ct. 850 (1890). See also *Mansell v. Mansell*, 490 U.S. 581, 587, 104 L. Ed. 2d 675, 109 S. Ct. 2023 (1989) ("[D]omestic relations are preeminently matters of state law"); *Moore v. Sims*, 442 U.S. 415, 435, 60 L. Ed. 2d 994, 99 S. Ct. 2371 (1979) ("Family relations are a traditional area of state concern"). So strong is our deference to state law in this area that we have recognized a "domestic relations exception" that "divests the federal courts of power to issue divorce, alimony, and child custody decrees." *Ankenbrandt v. Richards*, 504 U.S. 689, 703, 119 L. Ed. 2d 468, 112 S. Ct. 2206 (1992).

Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12-13, 124 S. Ct. 2301 (2004). Thus, the court will again abstain from any interpretation of the QDRO or any decision finding a specific dollar amount of DSO arrears owed. This matter is exclusively for the state

Family Law court to decide. This leaves Debtors in a bind. While awaiting this state court determination, Debtors still cannot afford plan payments under the current plan and need a modification.

The Debtors, unquestionably, may modify a plan to alter the distribution to Creditor as needed to "take account of any payment of such claim other than under the plan. . . ." § 1329(a)(3). But absent Creditor's agreement, the modified plan must provide for full payment of all priority claims including those for a "domestic support obligation." § 1322(a)(1); § 1329(b). Hence the issue: What is the amount of the Creditor's claim? Nearly $84,000.00, about $62,000.00 plus interest, about $9,000.00? Confirming the plan *de facto* necessitates a finding of what is owed as the plan is presently drafted. The parties either must agree on the arithmetic or ask the San Diego County Superior Court to amend the QDRO.

And so, this matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

The primary legal issue appears to be the treatment of Creditor's claim in the proposed modified plan. But also, this court's authority to interpret a Superior Court's Family Law order is an issue. This court may abstain from further consideration of the Family Law order depending upon future proceedings in this matter.

3. 20-11247-B-13 **IN RE: XUE XIONG**
MMJ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-5-2020 [41]

CAPITAL ONE AUTO FINANCE/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

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.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, 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 amount of damages). *Televideo Systems, 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.

The movant, Capital One Auto Finance, a division of Capital One, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) & (d)(2) with respect to a 2014 Honda Accord EX-L Sedan 4D ("Vehicle"). Doc. #41.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

Xue Xiong ("Debtor") executed a written contract for the purchase and financing of Vehicle on March 17, 2018, which was subsequently assigned to Movant that same date. Doc. #43, ¶ 3; #44, Ex. A & B. As of November 5, 2020, Debtor has missed six pre-petition payments at $389.98 for a total pre-petition arrearage of $2,339.88. Doc. #43, ¶ 4. Further, Debtor has missed seven post-petition payments of $389.98 per month for a total post-petition arrearage of $2,729.86 with another payment becoming due on November 16, 2020. *Ibid.* The total amount owed to Movant as of the date of the petition is $13,867.39, consisting of $12,703.92 in principal, $512.45 in interest, and $650.92 in costs. Doc. #45. Additionally, Movant contends the Vehicle is worth $13,649.00 and therefore Debtor has no equity in the Vehicle. Doc. #43 at ¶ 5. Finally, according to the motion, Movant repossessed Vehicle on January 15, 2020, which was before Debtor filed chapter 13 bankruptcy. Doc. #41, ¶ 7.

Debtor filed chapter 13 bankruptcy on March 30, 2020. Doc. #1. Movant is listed in Schedule E/F as an unsecured creditor. *Id.*, Schedule E/F at ¶ 4.4. Vehicle is not listed in Schedules A/B or C, likely because Vehicle was repossessed months before Debtor filed bankruptcy. *Id.*, Schedules A/B & C; Doc. #41, ¶ 7.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least six pre-petition payments and seven post-petition payments. Movant has produced evidence that Debtor is delinquent at least $13,867.29. Doc. #43; #45. Additionally, the court finds that Debtor does not have an equity in the property and the property is not necessary to an effective reorganization. *Ibid.* Also, the collateral is in Movant's possession.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) & (d)(2) to permit Movant to dispose of its collateral

pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the collateral is a depreciating asset and Movant is already in possession of Vehicle.

4. 20-12848-B-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
ALG-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY VALLEY STRONG CREDIT UNION
10-2-2020 [15]

VALLEY STRONG CREDIT UNION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.

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

DISPOSITION: Sustained.

ORDER: The court will issue the order.

This objection will be SUSTAINED.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and previously continued to December 9, 2020 at 9:30 a.m. Pursuant to the court's prior order (Doc. #24), the debtors were to either (1) file and serve a written response to creditor Valley Strong Credit Union's opposition to this motion not later than November 25, 2020, or (2) file, serve, and set for hearing a motion to confirm a modified plan not later than December 2, 2020, or the objection would be sustained on the grounds stated in the opposition. Debtors did neither. Therefore, the objection will be SUSTAINED.

5. 19-11856-B-13 **IN RE: JAIME BRYAN**
NES-1

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
11-6-2020 [22]

JAIME BRYAN/MV
NEIL SCHWARTZ/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.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, 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 amount of damages). *Televideo Systems, 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.

The motion will be GRANTED.

Jaime Bryan's ("Debtor") counsel, Neil E. Schwartz of the Law Offices of Neil E. Schwartz ("Movant"), requests fees of $5,987.50 and costs of $420.00 for a total of $6,407.50 for services rendered from April 23, 2019 through November 4, 2020. Doc. #22. Debtor consented to this fee application. *Id.*, 5 at ¶ 7.

Debtor filed bankruptcy on May 1, 2019. Doc. #1. Debtor's chapter 13 plan was confirmed on July 16, 2020. Doc. #16. The plan provided that Movant would be paid through the plan subject to court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #2, ¶ 3.05. The plan further indicates that Movant was paid $2,690.00 prior to the filing of the case, and an additional $12,000.00 would be paid to Movant through the plan. *Ibid.* Movant's *Rights and Responsibilities*, Form EDC 3-096, provides that initial fees charged in this case total $14,690.00 with $2,690.00 paid up front. Doc. #3.

However, in the fee application, Movant states that he received $3,000.00 in fees prior to filing the petition. Doc. #22, 2 at ¶ 2b1. This discrepancy appears to have been caused by allocating $310 in initial fees paid to Movant toward the filing fee, while retaining costs for the Credit Report and Debtor Education Course in the fees listed in Form EDC 3-096 and the plan. *See* Doc. #14. As result, although Movant obtained a retainer of $3,000, he only listed $2,690.00 on the plan and EDC Form 3-096 because $310 of it was pre-allocated to the petition's filing fee. The $310 filing fee is included in the fee application as a request for reimbursement of costs. *See* Doc. #22, 4 at ¶ 6d. For the purposes of this fee application, the court will construe Movant as having received a retainer of $3,000, not $2,690 as listed in Form EDC 3-096 and the chapter 13 plan.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1)

preparing and filing the petition and plan to alleviate Debtor's need to restructure payments to unsecured creditors; (2) reviewing all filed claims; (3) prosecuting confirmation of the plan, which was confirmed July 16, 2019 (Doc. #16); and (4) preparing and filing this fee application. Doc. #22; #24, Ex. A. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $5,987.50 in fees and $420.00 in costs. After applying Movant's $3,000.00 retainer to the balance of fees due, the chapter 13 trustee is authorized to pay the remainder of $3,407.50.

6. 20-12359-B-13 **IN RE: CARINA LOERA**
MHM-1

CONTINUED MOTION TO DISMISS CASE
9-21-2020 [18]

MICHAEL MEYER/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING. MOTION WITHDRAWN

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

DISPOSITION: The motion is dismissed and dropped from calendar.

NO ORDER REQUIRED.

The chapter 13 trustee withdrew this motion on November 12, 2020. Doc. #47. Accordingly, the motion is dismissed, and this matter will be dropped from calendar.

7. 20-13261-B-13 **IN RE: HUMBERTO COVIAN**
SLL-1

MOTION TO VALUE COLLATERAL OF SANTANDER
10-29-2020 [12]

HUMBERTO COVIAN/MV
STEPHEN LABIAK/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.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, 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 amount of damages). *Televideo Systems, 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.

Debtor asks the court for an order valuing a 2005 Ford Super Duty with 162,000 miles ("Vehicle") at $10,200.00. Doc. #12. The Vehicle is encumbered by a purchase-money security interest in favor of creditor Santander Consumer USA, Inc. ("Creditor"). Claim no. 1.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase-money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

As noted above, Creditor's claim is a purchase-money security interest. Debtor purchased the Vehicle on October 22, 2017, which is more than 910 days preceding the petition filing date. Doc. #14. Thus, the elements of § 1325(a)(*) are not met and § 506 is applicable.

Schedule A/B lists a 2005 Ford "F250 Crew Cab Lariat" with 162,000 miles valued at $10,200.00. Doc. #1, Schedule A/B at ¶ 3.8. Creditor is properly listed in Schedule D. *Id.*, Schedule D at ¶ 2. Creditor is also listed in the chapter 13 plan with a Class 2(B) claim reduced based on the value of the collateral. Doc. #6, ¶ 3.08.

Debtor's declaration states his belief that the replacement value of the Vehicle is $10,200.00. *Id.*, ¶ 6. Debtor states that this opinion is based on the age and condition of the Vehicle, and a value report

from the National Automobile Dealers Association ("NADA") Guides. *Id.*, ¶ 4. Although Debtor cannot rely on NADA Guides because he has not established himself as an expert, Debtor is competent to testify as to the value of Vehicle as its owner. In the absence of contrary evidence, Debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Meanwhile, Creditor filed a proof of claim on October 19, 2020, which states the amount owed to be $13,522.52. Claim no. 1; Doc. #15, Ex. A. Notably, Creditor's claim indicates the value of Vehicle is only $9,900.00, which is $300 less than Debtor's valuation. *Id.*, ¶ 9. The court is perplexed as to Debtor's reasoning for increasing Creditor's valuation.

Nevertheless, Debtor is competent to testify as to the value of his Vehicle. This motion will be GRANTED, and Creditor's secured claim will be fixed at $10,200.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

8. 20-11492-B-13 **IN RE: THOMAS LOGAN**
MHM-2

CONTINUED MOTION TO DISMISS CASE
9-22-2020 [41]

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING. MOTION WITHDRAWN.

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

DISPOSITION: Motion is dismissed and dropped from calendar.

NO ORDER REQUIRED.

The chapter 7 trustee withdrew this motion on November 25, 2020. Doc. #68. Accordingly, this motion is dismissed, and the matter will be dropped from calendar.

11:00 AM

1. 17-14112-B-13 **IN RE: ARMANDO NATERA**
20-1035

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-5-2020 [1]

NATERA V. BARNES ET AL
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. 17-14112-B-13 **IN RE: ARMANDO NATERA**
20-1035 ZCL-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
11-6-2020 [67]

NATERA V. BARNES ET AL
ZI LIN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted. Plaintiff to file amended complaint within 14 days of entry of the order.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order in conformance with the ruling below.

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

Introduction

Michael Scott Lincicum and Mitzi Lincicum (collectively "Defendants") filed this motion to dismiss arguing that because the sole cause of action against them is for violation of the automatic stay, no violation could have occurred while the case was dismissed, and therefore the adversary proceeding should be dismissed with prejudice. Doc. #67.

Armando Natera ("Plaintiff") timely opposed dismissal for two reasons: (1) although the stay was not in effect when Defendants acted, the stay rendered a previous sale void and Defendants' subsequent actions deprived Plaintiff of his right to property, which constitutes multiple independent violations of the stay that existed at the time of the foreclosure sale; (2) under Federal Rule

of Civil Procedure[1] 19(a)(1)(B), Defendants are necessary parties to this adversary proceeding and cannot be dismissed. Doc. #77.

Defendants responded, arguing that the case should be dismissed with prejudice because: (1) Plaintiff failed to allege a claim for violation of the automatic stay because (a) they did not violate the stay as post-dismissal purchasers of the Property and (b) Plaintiff did not allege any facts suggesting Defendants had notice of the bankruptcy case purportedly annulling the foreclosure sale; and (2) Defendants are not necessary parties under Civil Rule 19. Doc. #79.

This motion will be GRANTED WITH LEAVE TO AMEND.

Background

On July 14, 2006, Plaintiff acquired an ownership interest in real property located at 2430 East Orrland Avenue, Pixley, CA 93256 ("Property"). Doc. #1, ¶ 12. Plaintiff also owned a mobile home ("Mobile Home") that was located on the Property. *Id.*, ¶ 33. Property was encumbered by a deed of trust secured by defendant The Richard Allen Barnes Trust Dated September 1, 2011("Barnes") from a loan obtained on April 8, 2016. *Id.*, ¶ 13.

On May 25, 2017, Parker Foreclosure Services, LLC ("Parker"), recorded a Notice of Default against Property as trustee under the deed of trust. *Id.*, ¶¶ 15-16. On August 29, 2017, Parker recorded a Notice of Sale against Property that stated a public auction was scheduled to be held on September 27, 2017 at 2:00 p.m. but was later postponed to October 25, 2017. *Id.*, ¶ 17-19.

Plaintiff filed chapter 13 bankruptcy on October 25, 2017, which imposed the automatic stay under 11 U.S.C. § 362. *Id.*, ¶ 20. Meanwhile, Parker continued with the trustee's sale and Property was sold to Barnes as the highest bidder. *Id.*, ¶ 22. Defendant contends that the sale of Property was void because the automatic stay was in place at the time the foreclosure sale occurred. *Id.*, ¶ 23. Despite allegedly knowing that the sale was void, Parker and Barnes recorded the Trustee's Deed Upon Sale on October 30, 2017 and commenced unlawful detainer proceedings. *Id.*, ¶¶ 27-30; *see also* Doc. #71, Ex. A.

Plaintiff's chapter 13 case was dismissed on January 3, 2018 for failure to "timely pay installment(s) according to Order Approving Payment of Filing Fee in installments[.]" Doc. #71, Ex. B. Subsequent to dismissal on February 23, 2018, Plaintiff was evicted from the Property by a sheriff and sometime thereafter the locks were changed on the Mobile Home. Doc. #1, ¶¶ 31-33.

Lincicum Defendants entered the picture on March 27, 2018, when Barnes sold the Property to the Lincicums. *Id.*, ¶ 34. Defendants recorded a grant deed in Tulare County on April 11, 2018. Doc. #71,

[1] Future references to the Federal Rules of Civil Procedure will be shortened to "Civil Rule;" future reference to the Federal Rules of Bankruptcy Procedure will be shortened to "Rule."

Ex. C. The complaint alleges that "[t]he Lincicum Defendants were aware of the Plaintiff's bankruptcy at the time they purchased the Property from Barnes." Doc. #1, ¶ 35. Additionally, Plaintiff contends that First American Title Company, not a party in this adversary proceeding, also was aware of the bankruptcy at the time of the sale and as result, Defendants were not bona fide purchasers for value. *Id.*, ¶¶ 36-37. Plaintiff alleges that Defendants "demanded that Plaintiff sign over to them his interest in the Mobile home[,]" which he refused to do. *Id.*, ¶¶ 38-39.

On June 14, 2018, Defendants executed a grant deed and sold the Property to Roger L. Ward and Sandra S. Ward (collectively "Wards"), who are party to this adversary proceeding. *Id.*, ¶ 40. The Wards' grant deed was recorded in Tulare County on June 21, 2018. Doc. #71, Ex. D. Plaintiff contends that he and "others" informed relatives and counsel for the Wards about the bankruptcy and its effect on the foreclosure sale, and thus the Wards were aware of the bankruptcy and were not bona fide purchasers for value. Doc. #1, ¶¶ 41-44. Plaintiff notes that in 2019, the Wards filed an action against Plaintiff for possession of the Mobile Home and obtained a judgment for possession of the Mobile Home, damages, sanctions, and costs. *Id.*, ¶ 46.

Plaintiff filed an *ex parte* application to reopen his bankruptcy case on June 5, 2020. Doc. #71, Ex. E. Plaintiff then filed this adversary proceeding on that same date.

Plaintiff's adversary proceeding lists one cause of action naming Barnes, Parker, Defendants (the Lincicums), and the Wards as defendants. Specifically against the Lincicums, Plaintiff alleges willful violation of the automatic stay when Defendants sought to have Barnes transfer title and possession of the Property and Mobile Home to them. Doc. #1, ¶¶ 53-55. Plaintiff argues additional violations occurred when he was denied access to the Mobile Home on the Property. *Id.*, ¶¶ 56. Further, Plaintiff alleges that Defendants claimed title to the Property and sought to transfer it to the Wards, which also constitute independent violations of the stay. *Id.*, ¶¶ 57-58. As result of the Lincicums' purported violations, and for the individual alleged violations of Barnes, Parker, and the Wards, Plaintiff seeks declaratory judgment that the foreclosure of Property and all subsequent transfers of Property were void. *Id.*, ¶ 62. Additionally, Plaintiff seeks to recover actual and punitive damages for willful violations of the automatic stay of 11 U.S.C. § 362(a). *Id.* ¶¶ 63-64.

Motion to Dismiss Standard

Civil Rule 12(b)(6) states dismissal is warranted "for failure to state a claim upon which relief can be granted." Courts may dismiss a complaint if it "fails to state a cognizable legal theory or fails to allege sufficient factual support for its legal theories." *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir. 2016) (citing *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010)); *see also Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). "A complaint need not state 'detailed factual allegations,' but must contain sufficient factual

matter to 'state a claim to relief that is plausible on its face.'" *Doan v. Singh*, 617 F.App'x. 684, 685 (9th Cir. 2015) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544-55 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).

When considering a motion to dismiss, all material facts of the complaint are to be taken as true and should be viewed in the light most favorable to the plaintiff. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 662 (citing *Twombly*, 550 U.S. at 555). The court may also draw on its "judicial experience and common sense." *Id.* at 679. Additionally, the court may consider the following limited material without converting the motion to dismiss into a motion for summary judgment under Civil Rule 56 (made applicable under Rule 7056): (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 curium*) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)).

Dismissal under Civil Rule 12(b)(6) on the basis of an affirmative defense is proper only if the defendant shows some obvious bar to securing relief on the face of the complaint. *ASARCO, LLC v. Union Pacific R. Co.*, 765 F. 3d 999, 1004 (9th Cir. 2014)

Alleged Violations of Automatic Stay

First, Defendants contend that they did not violate the automatic stay as a matter of law because the case had already been dismissed when they took title to and sold the Property. Doc. #67; #69. As noted above, Plaintiff's bankruptcy case was dismissed on January 3, 2018. Doc. #71, Ex. B. Defendants contend that the automatic stay did not trigger again until at least June 5, 2020 when the case was reopened. *Id.*, Ex. E, F; Doc. #67, #69. Actually, the stay was not reimposed as it is the filing of the petition, not the reopening of the case, that triggers the automatic stay. § 362(a).

Meanwhile, Defendants quote the complaint and note their alleged stay violations were said to have occurred "[o]n or about March 27, 2018," and "[a]fter the Lincicum Sale[,]" which was held "[o]n or about June 14, 2018[.]" *Id.*, 5 quoting Doc. #1, ¶¶ 34, 38, 40. Defendants contend that these dates clearly fall in the time period when the case was dismissed, before it was reopened, and thus there can be no violation of the automatic stay as a matter of law.

11 U.S.C. § 362 operates as a stay against, among other things, "any act to create, perfect, or enforce any lien against property of the estate . . . [or] against property of the debtor any lien to the

extent that such lien secures a claim that arose before the commencement of the case under this title." 11 U.S.C. §§ 362(a)(4), (a)(5).

The automatic stay exists as to property "until such property is no longer property of the estate." 11 U.S.C. § 362(c)(1); *Spirtos v. Moreno (In re Spirtos)*, 221 F.3d 1079, 1081 (9th Cir. 2000). Defendants contend that property "ceases to be property of the estate if the case is dismissed." Doc. #69 (quoting Kathleen P. March, et al., Cal. Prac. Guide: Bankruptcy Ch. 8(I)-D, Duration of the Automatic Stay ¶8:848 (The Rutter Group, December 2019 Update)).

Defendants cite to the Bankruptcy Appellate Panel decision in *In re Anderson*, where the panel held that a foreclosing lender did not need to provide additional notice a foreclosure sale that took place after dismissal but before reinstatement of the case. *Carl I. Brown & Co. v. Anderson (In re Anderson)*, 195 B.R. 87, 90, 91-92 (B.A.P. 9th Cir. 1996). Defendants rely on additional authority finding no violation of the stay for a repossession of a car after dismissal and before reopening. *In re Rivera*, 280 B.R. 699, 701 (Bankr. S.D. Ala. 2001) ("Debtors . . . must request expedited relief on motions to reinstate in order to protect against repossessions, foreclosures, garnishments, and other state law collection remedies. There is no protection to a debtor once a case is dismissed."); *see also G.E. Capital Mortg. Servs. V. Thomas (In re Thomas)*, 194 B.R. 641 (Bankr. D. Ariz. 1995) ("[O]nce the bankruptcy case is dismissed or the automatic stay has been vacated, the debtor must seek an affirmative stay or injunction to prevent creditors from pursuing their remedies under applicable state law. If the debtor does not so timely act, any actions taken by the creditor while the case is dismissed or while a stay is not in effect will be valid."); *In re Weston*, 110 B.R. 452, 456 (E.D. Cal. 1989) ("[T]he foreclosure action did not violate the automatic stay because the stay was not in effect at the time the foreclosure took place.").

As Plaintiff's case was dismissed on January 3, 2018 and he did not reopen it until June 5, 2020, Defendants argue that the actions alleged on March 27, 2018 and sometime around or after June 14, 2018, were well before the stay could have been reinstated on June 5, 2020, nearly two years later. "[E]ven if a case is reinstated, the automatic stay is not retroactively reinstated with respect to creditor conduct that occurred between the dismissal and the reinstatement." *Frank v. Gulf States Fin. Co. (In re Frank)*, 254 B.R. 368, 374 (Bankr. S.D. Tex. 2000); *see also In re Bland*, 252 B.R. 133, 136-37 (Bankr. W.D. Tenn. 2000) (reasoning that no automatic stay was in existence when a foreclosure sale occurred because the debtor's case was closed and had not yet been reinstated).

In response, Plaintiff concedes that these alleged actions did occur while the case was dismissed and before it was reopened. Doc. #77. However, Plaintiff vigorously argues that the foreclosure sale to Barnes was not valid because the automatic stay triggered when he filed his chapter 13 petition on October 25, 2017, thereby rendering the sale on that same date void. *Id.* Plaintiff alleges Defendants subsequent actions constituted violations of the automatic stay

because those actions deprived Plaintiff of his right to his property. *Id.*

Plaintiff argues that 11 U.S.C. § 362(a)(5) is intended specifically for the benefit of the debtor's property and applies here because Barnes' lien arose prior to the bankruptcy. *Id.* citing *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). On that basis, Plaintiff contends that Defendants willfully violated the automatic stay. "The 'willfulness test' for automatic stay violations merely requires that: (1) the creditor know of the automatic stay; and (2) the actions that violate the stay be intentional." *Ozenne v. Bendon (In re Ozenne)*, 337 B.R. 214, 220 (B.A.P. 9th Cir. 2006) (quoting *Morris v. Peralta*, 317 B.R. 381, 389 (B.A.P. 9th Cir. 2004) (citations omitted); *see also In re Pinkstaff*, 974 F.2d 113, 115 (9th Cir. 1992)). "[A]ctions taken in violation of the automatic stay are void." *Gruntz v. Cty. Of L.A. (In re Gruntz)*, 202 F.3d 1074, 1082 (9th Cir. 2000) citing *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992).

Under 11 U.S.C. § 349, Plaintiff professes that dismissal of his bankruptcy case does not retroactively "validate" the foreclosure sale that was previously void because it occurred when the stay was in effect. Doc. #77, 4 citing *In re PRINE*, 222 B.R. 610, 613 (Bankr. N.D. Iowa 1997) ("Dismissal of the previous case does not validate actions taken in violation of the stay.") (citing *In re Olson*, 101 B.R. 134, 145 (Bankr. D. Neb. 1988), *aff'd*, 133 B.R. 1016 (D. Neb. 1991), *modified on other grounds*, 161 B.R. 45 (D. Neb. 1992), *aff'd*, 4 F.3d 562 (8th Cir.), *cert. denied*, 510 U.S. 1024 (1993)). On the contrary, under § 349, Plaintiff contends dismissal "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title." 11 U.S.C. § 349(b)(3).

Plaintiff believes the foreclosure sale took place after the bankruptcy filing and thus violated the automatic stay. Further, the Trustee's Deed Upon Sale was recorded, and Barnes' actions to evict Plaintiff also occurred while the stay was in effect, and therefore all were void before the case was dismissed. Doc. #77.

Conceding that Defendants' individual actions did not occur until after the case was dismissed, Plaintiff reiterates the allegation that Defendants knew of the bankruptcy filing at the time they purchased the property, and were thus on notice that Barnes did not have title to Property allowing him the power to convey it to Defendants. Despite that purported knowledge, Defendants proceeded to purchase the Property and then deprived Plaintiff of his rights. *Id.* citing Doc. #1, ¶¶ 35-36.

Because Barnes' lien arose before Plaintiff filed bankruptcy, the foreclosure was void, so Plaintiff argues the transfer to Defendants was void, and their subsequent transfer to the Wards was void. Plaintiff believes that Defendants had knowledge and so they independently violated the stay by relying on a sale they knew to be void. Doc. #77.

As result, Plaintiff insists Defendants were not bona fide purchasers. But even if they were bona fide purchasers, because this transaction involves a post-petition transfer Plaintiff maintains it is still a violation of the stay. *Id.* citing *In re Mitchell*, 279 B.R. 839, 843 (B.A.P. 9th Cir. 2002). Plaintiff argues that Defendants' authority is distinguishable because those cases did not involve situations where there were previous violations of the automatic stay. Plaintiff states that Defendants are attempting to "sidestep" the voided sale with subsequent transfers. On this basis, Plaintiff believes the complaint is sufficiently pleaded and therefore the motion must be denied. Doc. #77.

Defendants filed a response reiterating that they did not take title to the Property until after the case was dismissed and the automatic stay had been lifted. Doc. #79. The only claim Plaintiff can assert, according to Defendants, is to avoid the initial transfer of Property, not prosecute Defendants for violation of the automatic stay. *Id.*

Further, Defendants emphasize that the complaint avers knowledge of the bankruptcy at the time Defendants acquired title to Property but does not include sufficient factual matter to state a claim for relief. *Id.* citing Doc. #1, ¶¶ 35-36. In particular, Defendants note the "when" and "how" they received notice of the bankruptcy case is omitted from the complaint. This court is inclined to agree. Plaintiff has not sufficiently pleaded when or how Defendants received notice of the bankruptcy.

Accordingly, this motion will be GRANTED WITH LEAVE TO AMEND as to the Lincicum Defendants for the alleged violation of the automatic stay. Defendants have made a *prima facie* showing that Plaintiff has not sufficiently pleaded Defendants alleged knowledge of the bankruptcy case rendering the foreclosure sale void at the time the transfer from Barnes to Defendants occurred. Though a foreclosure sale post-filing is void, that is not the issue here. Section 362(k) requires a willful violation of the stay and the complaint does not plead enough to implicate Defendants in the alleged willful violation.

Necessary Parties

As part of his opposition, Plaintiff also claims that Defendants are necessary parties under Civil Rule 19 (as incorporated by Rule 7019), which defines a required party to an action:

> *Required Party*. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (i) as a practical matter impair or impede the person's ability to protect the interest; or

> (ii) leave an existing party subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Civil Rule 19(a)(1).

Plaintiff concedes that Defendants are not claiming an interest in Property, "so they are not required parties to the action simply because they are in the chain of title to the property Plaintiff seeks to recover." Doc. #77, 8 citing *United States v. Scherping*, No. CIV. 4-89-825, 1992 WL 188817, at *4 (D. Minn. May 26, 1992). However, Plaintiff asserts they are necessary parties because the court could not accord complete relief if Defendants were dismissed. Plaintiff is seeking damages against many defendants who were aware of the bankruptcy and proceeded anyway, including Barnes, Parker, the Wards, and the Lincicum Defendants. If Defendants were dismissed, Plaintiff claims this missing link would result in according incomplete relief. Thus, Plaintiff believes the motion must be denied. Doc. #77.

Defendants disagree. Doc. #79. Defendants describe Plaintiff's claims as seeking the following relief: (1) a declaration that Plaintiff is the owner of Property and the Mobile Home; and (2) damages. Doc. #1, ¶ 9. Because Defendants do not own any interest in the Property or the Mobile Home, which is owned by the Wards, they are not necessary as to the first claim for relief. Doc. #79. As to damages, Plaintiff is only entitled to relief if he can successfully prove there was a violation of the automatic stay. As discussed above, however, the claim for violation of the automatic stay does not sufficiently plead knowledge and thus Defendants seek dismissal without leave to amend. There is no allegation in the complaint sufficient to impute the Lincicum's knowledge of the automatic stay when it was extant or supporting a damage claim against the Lincicums as the complaint is currently pleaded. There may be other theories available to the Plaintiff based on the facts.

While this court does agree that Plaintiff has not adequately pleaded Defendants' knowledge, we do not agree dismissal without leave to amend is appropriate because this deficiency could potentially be cured. Defendants may be a necessary party to a title dispute, but that does not mean they are a necessary party to all claims.

Conclusion

Accordingly, this motion will be GRANTED WITH LEAVE TO AMEND and the complaint will be DISMISSED WITH LEAVE TO AMEND as to Defendants Michael Scott Lincicum and Mitzi Lincicum. Plaintiff shall file an amended complaint, if any, within 14 days of entry of this order.