United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

9:30 AM

1:17-13028 Hector Garcia and Edelmira Avila Garcia **Chapter 13**

#1.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

fr. 8/5/20; 9/16/20(stip) ; 10/14/20(stip);

Docket 62

***** VACATED *** REASON: continued to 1/13/21 per order entered on 12/15/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Garcia — Represented By LeRoy Roberson

Joint Debtor(s):

Edelmira Avila Garcia — Represented By LeRoy Roberson

Trustee(s):

Elizabeth (SV) F Rojas (TR) — Pro Se

9:30 AM
1:20-12055 Raymond Tsarukyan **Chapter 7**

#2.00 Motion for relief from stay [UD]

M&O PROPERTIES LTD
VS
DEBTOR

Docket 9

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The order is binding and effective in any bankruptcy case commenced by or against the debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

9:30 AM
CONT... Raymond Tsarukyan **Chapter 7**

Debtor(s):

Raymond Tsarukyan	Represented By Ruben Salazar

Movant(s):

M&O Properties, Ltd.	Represented By Joseph Cruz

Trustee(s):

Diane C Weil (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

9:30 AM
1:19-11777 Winters-Schram & Associates **Chapter 7**

#3.00 Motion for relief from stay [AN]

MILLER WOODWORKING INC
VS
DEBTOR

Docket 73

Tentative Ruling:

Grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Movant states that it seeks recovery only from applicable insurance.

Movant may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the debtor and property of the debtor's bankruptcy estate.

Movant may proceed against the non-debtor defendants in the nonbankruptcy action.

The Court will grant the movant's request to annual the automatic stay. The movant's declaration states that any actions taken prior to October 2, 2019, were done without knowledge of the debtor's bankruptcy case.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Winters-Schram & Associates Represented By
Daniel H Reiss
Lindsey L Smith

9:30 AM

CONT... Winters-Schram & Associates **Chapter 7**

Movant(s):

Miller Woodworking, Inc. — Represented By
Denetta Scott

Trustee(s):

Nancy J Zamora (TR) — Represented By
Noreen A Madoyan
Jeremy Faith

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

9:30 AM

1:20-11984 Lindsay Marie Pacifico **Chapter 7**

#5.00 Motion for relief from stay [AN]

SANDRA HENSARLING
VS
DEBTOR

Docket 16

***** VACATED *** REASON: Case reassigned to Judge Tighe per order #21. lf**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lindsay Marie Pacifico	Represented By Navid Kohan

Movant(s):

Sandra Hensarling	Represented By Alberto J Campain

Trustee(s):

Diane C Weil (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

9:30 AM

1:20-11984 Lindsay Marie Pacifico **Chapter 7**

#6.00 Motion for relief from stay [AN]

ASHLEY HENSARLING
VS
DEBTOR

Docket 17

***** VACATED *** REASON: Case reassigned to Judge Tighe per order #21. lf**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lindsay Marie Pacifico — Represented By Navid Kohan

Movant(s):

Ashley Hensarling — Represented By Alberto J Campain

Trustee(s):

Diane C Weil (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

9:30 AM
1:20-11952 Michael A Di Bacco **Chapter 7**

#7.00 Motion for relief from stay [PP]

DAIMLER TRUST
VS
DEBTOR

Docket 8

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Michael A Di Bacco — Represented By
Leon Nazaretian

Movant(s):

Daimler Trust — Represented By
Sheryl K Ith

9:30 AM
CONT... Michael A Di Bacco **Chapter 7**

Trustee(s):
Amy L Goldman (TR) Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

9:30 AM
1:20-11932 Cynthea N Douglas **Chapter 13**

#8.00 Motion for relief from stay [UD]

ANZA MANAGEMENT COMPANY
VS
DEBTOR

Docket 7

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Cynthea N Douglas Pro Se

Movant(s):

Anza Management Company Represented By
Agop G Arakelian

9:30 AM
CONT... Cynthea N Douglas **Chapter 13**

Trustee(s):
Elizabeth (SV) F Rojas (TR) Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

1:30 PM

1:19-12150 Houchik Boyadjian **Chapter 7**

Adv#: 1:19-01132 Sridhar Equities, Inc., as assignee v. Boyadjian et al

#9.00 Status conference re: amended complaint for non dischargeability

fr. 1/15/20; 3/18/20; 4/1/20; 9/23/20; 11/18/20

Docket 25

***** VACATED *** REASON: Judgment entered 12/2/20 [doc. 50] & remaining claims dismissed 12/10/20 [doc. 53].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Houchik Boyadjian	Pro Se

Defendant(s):

Houchik Boyadjian	Pro Se
DOES 1 through 100, inclusive	Pro Se

Plaintiff(s):

Corrdary LLC	Represented By Catherine Schlomann Robertson

Trustee(s):

David Keith Gottlieb (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

1:30 PM
1:20-10384 Amir Zamzelig **Chapter 13**
Adv#: 1:20-01052 Peskin et al v. Zamzelig

#10.00 Pretrial conference re: complaint to determine nondischargeability of debt

fr. 7/15/20

Docket 1

Tentative Ruling:

Contrary to the Court's scheduling order [doc. 8] and Local Bankruptcy Rule 7016-1(b), the parties did not timely file a joint pretrial stipulation, and the plaintiff did not timely file a unilateral pretrial statement. Consequently, the Court will issue an Order to Show Cause why this adversary proceeding should not be dismissed for failure to prosecute.

The Court will prepare the Order to Show Cause.

Party Information

Debtor(s):

Amir Zamzelig	Represented By David A Tilem

Defendant(s):

Amir Zamzelig	Pro Se

Plaintiff(s):

Brent Peskin	Represented By James B Devine
Dori Peskin	Represented By James B Devine

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

1:30 PM
1:20-10659 Nasrin Nino **Chapter 7**
Adv#: 1:20-01061 GOTTLIEB v. Bilal

#11.00 Status conference re: complaint for
1) Avoidance and recovery of preferential transfer
[11 U.S.C. sec 547(b), 550(a), and 551],
2) Avoidance and recovery of post-petition transfer
[11 U.S.C. sec 549(a), 550(a), and 551] and
3) Disallowance of any claim held by defendant
[11 U.S.C. sec 502(d)]

fr. 8/5/20(stip); 10/7/20; 11/4/20

Stip to dismiss filed 11/18/20

Docket 1
***** VACATED *** REASON: Order approving stiplation for dismissal entered 11/19/20. [Dkt.16]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrin Nino — Represented By David S Hagen

Defendant(s):

Kamal Bilal — Pro Se

Plaintiff(s):

DAVID K GOTTLIEB — Represented By Carmela Pagay

Trustee(s):

David Keith Gottlieb (TR) — Represented By Carmela Pagay

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

1:30 PM

CONT... Nasrin Nino **Chapter 7**

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

1:30 PM

1:20-10910 Thomas A Perez **Chapter 7**

Adv#: 1:20-01067 ZAMORA v. Perez

#12.00 Status conference re: complaint for:
1. Avoidance of fraudulent transfer;
2. Avoidance of insider preference;
3. Turnover of estate's property;
5. Automatic preservation of avoided transfer

fr. 9/16/20; 11/4/20; 11/18/20

Docket 1

Tentative Ruling:

In light of the Court's ruling on the plaintiff's objection to the debtor's claim of a homestead exemption [Bankruptcy Docket, docs. 95, 105], how does the plaintiff intend to proceed with this action?

Party Information

Debtor(s):

Thomas A Perez	Represented By Stephen Parry

Defendant(s):

Maria Rita Perez	Pro Se

Plaintiff(s):

NANCY J ZAMORA	Represented By Toan B Chung

Trustee(s):

Nancy J Zamora (TR)	Pro Se

2:30 PM

1:20-11006 Lev Investments, LLC **Chapter 11**

Adv#: 1:20-01060 FR LLC, a California limited liability company v. Lev Investments, LLC et

#13.00 Motion of Defendants Ruvin Feygenberg, Michael Leizerovitz, and Sensible Consulting and Management, Inc. to Dismiss First Amended Adversary Complaint

Docket 32

Tentative Ruling:

Grant.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11 petition. On June 5, 2020, FR L.L.C. ("Plaintiff") removed a state court action against Debtor, Dmitri Ludkovski, Sensible Consulting and Management, Inc. ("Sensible"), Ruvin Feygenberg and Michael Leizerovitz (collectively, "Defendants") to this Court.

On October 14, 2020, Plaintiff filed a first amended complaint (the "FAC"). In the FAC, Plaintiff alleges—

> The lawsuit concerns the real property located at 13854 Albers Street, Sherman Oaks, CA 91401 (the "Property"). In late December 2018, Defendants approached Plaintiff's assignor for a loan of $119,000, secured by the Property. Defendants promised Plaintiff's assignor that the terms of the loan were for half a year with interest of 10% per annum and interest in the amount of $992 due on the first of every month, beginning on February 1, 2019 and continuing to July 1, 2019. On July 1, 2019, the principal and interest would be due in full.
>
> Defendants also promised that, upon the sale of the Property, which would take place no later than half a year from the date of the loan, Plaintiff's assignor would receive a proportional share of the profits from the sale of the Property, minus interest already paid. Based on these promises, Plaintiff's assignor deposited $119,000 to escrow/title for the benefit of Defendants. To date, Plaintiff has not been provided a note or

first priority deed of trust, and has not received any interest payments or profits from the Property.

On these allegations, Plaintiff asserts claims for: (A) conversion; (B) negligent bailment; (C) unjust enrichment; and (D) quiet title.

On October 28, 2020, Sensible, Mr. Feygenberg and Mr. Leizerovitz filed a motion to dismiss the FAC (the "Sensible Motion") [doc. 32]. On November 16, 2020, Debtor filed a motion to dismiss the FAC (the "Debtor Motion") [doc. 34]. On December 2, 2020, Plaintiff filed an omnibus opposition to the Sensible Motion and the Debtor Motion (the "Opposition") [doc. 39]. In the Opposition, Plaintiff added several allegations that were not in the FAC, including that a third party arranged the loan from Plaintiff's assignor, now alleged to be Kevin Moda, to Defendants, and that the alleged loan was meant to help Debtor's contribution to an agreement between Defendants to purchase certain secured debt against the Property. On December 9, 2020, Defendants filed replies to the Opposition [docs. 42, 44].

II. ANALYSIS

A. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face. 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. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks

omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network,* 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington,* 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.,* 798 F.2d 1279, 1282 (9th Cir. 1986).

"A court may [also] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id*., quoting *United States v. Richie*, 342 F.3d 903, 908 (9th Cir. 2003). State court pleadings, orders and judgments are subject to judicial notice under Federal Rule of Evidence 201. *See McVey v. McVey*, 26 F.Supp.3d 980, 983-84 (C.D. Cal. 2014) (aggregating cases); *and Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged..." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey,* 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith,* 203 F.3d 1122, 1127 (9th Cir. 2000).

B. Sufficiency of General Allegations under Rule 8(a)

A complaint must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 545. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). A complaint does not "suffice if it tenders 'naked assertions' devoid of 'further factual enhancement.'" *Id*. (quoting *Twombly*, 550 U.S. at 557).

"It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Renne v. Geary*, 501 U.S. 312, 316, 111 S. Ct. 2331, 2336, 115 L. Ed. 2d 288 (1991) (internal quotation omitted). In addition, "[i]t is well-settled that where the complaint names a defendant in the caption but contains no allegations indicating how the defendant violated the law or injured the plaintiff, a motion to dismiss the complaint in regard to that defendant should be granted." *Dove v. Fordham Univ.*, 56 F.Supp.2d 330, 335 (S.D.N.Y. 1999) (internal quotations omitted).

The FAC does not satisfy Rule 8(a). As set forth by Defendants, the FAC does not include any allegations regarding the identity of the assignor or the terms of the alleged assignment from the assignor to Plaintiff. This information is vital for Defendants to assess, for example, affirmative defenses to liability. *See Searles Valley Minerals Operations Inc. v. Ralph M. Parsons Serv. Co.*, 191 Cal.App.4th 1394, 1402 (Ct. App. 2011) ("The assignee 'stands in the shoes' of the assignor, taking his rights and remedies, subject to *any defenses* which the *obligor* has against the assignor prior to notice of the assignment.") (emphasis in *Searles Valley*) (internal quotation omitted). In addition, the FAC does not allege the role of each of the Defendants; instead, Plaintiff generally alleges that Defendants participated in the alleged transaction. As such, it is unclear how each Defendant injured Plaintiff.

Although the Court may not "look beyond the complaint to a plaintiff's moving papers,

such as a memorandum in opposition to a defendant's motion to dismiss," the additional allegations in the Opposition are insufficient to cure the FAC. *Schneider v. California Dep't of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998). Specifically, the FAC and the Opposition present contradictory allegations. For instance, despite alleging in the FAC that "Defendants, and each of them, approached Plaintiff's assignor for a loan," in the Opposition, Plaintiff alleges that a nonparty attorney arranged the alleged loan. Opposition, pp. 3-4.

Moreover, in the FAC, Plaintiff alleges its assignor was promised a "first priority deed of trust," FAC, ¶ 25, but in the Opposition, alleges that the debt purchase agreement between Defendants entitled Mr. Feygenberg and Mr. Leizerovitz to a first position deed of trust. Opposition, p. 3. Further, in the FAC, Plaintiff alleges the assignor loaned Defendants, "and each of them," the funds to be secured by the Property, FAC, ¶¶ 21-24, but in the Opposition, alleges that the nonparty attorney raised funds from the assignor to help pay for *Debtor's* share of the contribution to the alleged debt purchase agreement. Opposition, p. 4.

As such, although the Court may not consider allegations in the Opposition in assessing the adequacy of the FAC, the allegations in the Opposition, if included in the FAC, would not strengthen the FAC from attack under Rule 12(b)(6). The documents attached to Plaintiff's request for judicial notice also do not help Plaintiff overcome the motions to dismiss. First, certain exhibits provided by Plaintiff are not judicially noticeable. Next, the documents that *are* judicially noticeable do not support the FAC. Those documents mostly establish a chain of title to the Property that does not involve Plaintiff and/or its assignor; the documents are not pertinent to the allegations in the FAC, namely, the alleged loan transaction between the assignor and Defendants.

In the Opposition, Plaintiff does not appear to defend the FAC. Instead, Plaintiff asserts it *could* plead sufficient facts. Thus, Plaintiff appears to acknowledge that the FAC itself, the relevant document which the Court must assess, is inadequate. *See Schneider*, 151 F.3d at 1197 n.1 ("The focus of any Rule 12(b)(6) dismissal… is the complaint."). Because the allegations in the FAC are insufficient to meet the requirements of Rule 8(a), the Court will dismiss the FAC in its entirety, with leave to amend. [FN1].

C. The Quiet Title Claim

Although the Court is dismissing the FAC in its entirety based on Plaintiff's failure to

satisfy Rule 8(a), the Court also will address deficiencies in Plaintiff's quiet title and conversion claims. In the FAC, Plaintiff alleges that the "basis of Plaintiff's title to or interest in the Property is the conversion of Plaintiff's money for the purchase of the Property and its right to have been declared as the title holder of the Property." FAC, ¶ 43. Plaintiff also alleges that its assignor "was to have been given a Note and Deed of Trust evidencing the entrustment of money and interest thereon." FAC, ¶ 49.

In the Opposition, Plaintiff offers no explanation regarding why conversion of funds (which funds allegedly would have entitled Plaintiff to a promissory note and *deed of trust*) would result in Plaintiff holding title to the entire Property. Instead, in the Opposition, Plaintiff contends that it "can allege and prove" that Debtor took title to the Property pursuant to a resulting trust for the benefit of Plaintiff and a third party.

First, the FAC does not contain *any* allegations regarding resulting trusts. As such, if Plaintiff intends to rest its quiet title claim on a resulting trust theory, Plaintiff must amend the FAC to reflect that. In addition, even if Plaintiff included allegations regarding being the beneficiary of a resulting trust, the allegations, as they stand, would not state a viable claim for relief.

Under California law, "[a] resulting trust arises by operation of law from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest. Such a resulting trust carries out and *enforces the inferred intent of the parties*." *Fid. Nat'l Title Ins. Co. v. Schroeder*, 179 Cal.App.4th 834, 847 (Ct. App. 2009) (internal quotations omitted) (emphasis added). "A resulting trust does not arise unless both parties to the transaction intended that the holder of the property was to hold it in trust for the other." *In re Cedar Funding, Inc.*, 408 B.R. 299, 315 (Bankr. N.D. Cal. 2009).

"Intent to establish a *security interest* rather than a trust, is not a sufficient basis to impose a resulting trust to remedy the failure to perfect the security interest." *Id*., at 315 (emphasis added) (citing *In re Foam Systems Co.,* 92 B.R. 406, 409 (B.A.P. 9th Cir. 1988), *aff'd*, 893 F.2d 1338 (9th Cir. 1990) (holding that a resulting trust was not imposed against bank account where express intent between debtor and surety company was that surety would have lien against the account). "If… the person who paid the purchase price manifested an intention that the transferee should hold the property beneficially and should be liable merely to repay the purchase price lent to him, no resulting trust arises." Restatement (Second) of Trusts § 445 (1959); *see also In re*

Garcia, 92 F. App'x 486, 486-87 (9th Cir. 2004) ("Both the bankruptcy judge and the BAP correctly concluded that the initial transaction between Garcia and the sellers did not create a resulting trust in favor of [the creditor], because the parties clearly intended that [the debtor] *would* have the beneficial interest in the property and would ultimately repay [the creditor] for the down payment.") (emphasis in *Garcia*) (citing Restatement (Second) of Trusts § 445).

In the FAC, Plaintiff alleges that its assignor loaned money to Defendants in exchange for a promissory note and a deed of trust against the Property. FAC, ¶¶ 21-24. However, in the Opposition, Plaintiff alleges that the assignor contributed funds towards a *debt purchase* agreement, *not* towards the purchase of the Property. Opposition, p. 4. As such, Plaintiff's own allegations reflect that the intention of the parties was *not* to provide Plaintiff's assignor a beneficial interest in the entirety of the Property, even if the assignor allegedly was entitled to a deed of trust against the Property.

Nevertheless, even if Plaintiff alleges that the parties intended to provide Plaintiff's assignor an interest in the Property, as opposed to a deed of trust, Plaintiff would be entitled to a resulting trust proportional to the amount paid—

> Part payment of the purchase price, not subsequent monetary contributions, gives rise to a resulting trust to the extent thereof. The rule is that where one person pays part of the purchase price and title is taken in another's name, the payor cannot secure a greater interest in the property by way of a resulting trust than the proportion of the amount he paid bears to the total *purchase price.*

Martin v. Kehl, 145 Cal.App.3d 228, 243 (Ct. App. 1983) (citing, *inter alia*, Restatement (Second) of Trusts § 454).

In the FAC, Plaintiff alleges its assignor paid $119,000 towards the debt purchase agreement. FAC, ¶ 24. Plaintiff alleges in the Opposition that the debt purchase agreement was worth $2,037,302.61. Opposition, p. 2. To the extent the assignor's alleged contribution to the debt purchase agreement would produce a resulting trust in the Property, the resulting trust would be worth $119,000. Consequently, even considering the allegations in the Opposition, Plaintiff has not adequately stated a claim for quiet title. [FN2].

Additionally, the FAC does not include the information required by California Code of Civil Procedure ("CCP") § 761.020. Pursuant to that statute, a quiet title complaint "shall be verified and shall include all of the following:"

> (a) A description of the property that is the subject of the action. In the case of tangible personal property, the description shall include its usual location. In the case of real property, the description shall include both its legal description and its street address or common designation, if any.
>
> (b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. If the title is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession.
>
> (c) The adverse claims to the title of the plaintiff against which a determination is sought.
>
> (d) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought.
>
> (e) A prayer for the determination of the title of the plaintiff against the adverse claims.

CCP § 761.020.

Here, although the FAC satisfied CCP § 761.020(a), it does not include sufficient allegations regarding CCP § 761.020(b)-(e). The FAC also is not verified. As such, to adequately assert a claim for quiet title, Plaintiff must amend the FAC to include allegations under CCP § 761.020.

D. The Conversion Claim

"In California, '[t]he elements of a conversion are the creditor's ownership or right to possession of the property at the time of the conversion; the debtor's conversion by a wrongful act or disposition of property rights; and damages.'" *In re Thiara*, 285 B.R. 420, 427 (B.A.P. 9th Cir. 2002) (quoting *Farmers Ins. Exchange v. Zerin*, 53 Cal.App.4th 445, 451 (Ct. App. 1997)).

"[A] mere contractual right of payment, without more, will not suffice" to support a claim for conversion. *Zerin*, 53 Cal.App.4th at 452. Although the "existence of a lien… can establish the immediate right to possess needed for conversion," Plaintiff has not alleged that it has a lien against the Property. *Plummer v. Day/Eisenberg, LLP*, 184 Cal.App.4th 38, 45–46 (Ct. App. 2010). In the FAC, Plaintiff alleges that Defendants promised its assignor a deed of trust, but that such a deed of trust was never executed. FAC, ¶ 25. In the Opposition, Plaintiff also contends that "a deed of trust was not provided to Plaintiff (i.e. that a transfer of an interest in real property did not occur[])." Opposition, p. 11. As such, the allegations plead a contractual right of payment, not a property interest.

To the extent Plaintiff asserts that the oral promise of a deed of trust created a lien against the Property, Plaintiff has not offered a legal basis for such a conclusion. As noted by Debtor, an oral deed of trust violates the Statute of Frauds. Cal. Civ. Code §§ 1624, 2922.

> The creation of a lien by a deed of trust is a grant of an interest of real property. Such a grant must comply with the statute of frauds as codified by state law. Miller & Starr, *California Real Estate 2d.* § 1:58 (Bancroft–Whitney 1989); Cal. Civ. Code § 2922. California law requires that such a grant be in writing and signed by the grantor. Cal. Civ. Code § 1091. The grant then becomes effective upon delivery by the grantor. Cal. Civ. Code § 1054.

In re Van Ness Assocs., Ltd., 173 B.R. 661, 666 (Bankr. N.D. Cal. 1994).

In the FAC, Plaintiff alleges, at most, an oral promise to create a deed of trust. These allegations do not satisfy the Statute of Frauds. Although, as noted in Footnote 2, certain equitable interests in property (like resulting trusts) do not need to satisfy the Statute of Frauds, Plaintiff has not adequately alleged such a theory. Thus, without a property interest in the Property, Plaintiff's conversion claim is based on a breach of a contractual right to payment, which is not appropriate.

E. Plaintiff's Request for Attorneys' Fees

Plaintiff has not alleged a basis for its request for attorneys' fees, such as a statute or

contractual agreement between Plaintiff and/or its assignor, on the one hand, and Defendants, on the other hand. As such, if Plaintiff elects to amend the FAC, Plaintiff should elaborate on its basis for its request for attorneys' fees.

F. The Negligent Bailment Claim

In the Opposition, Plaintiff agreed to voluntarily dismiss its negligent bailment claim. As such, the Court need not address the parties' arguments regarding this claim.

III. CONCLUSION

The Court will dismiss the FAC with leave to amend, and to serve the amended complaint, no later than **December 30, 2020**.

Defendants must submit an order on each of their motions within seven (7) days.

FOOTNOTES

1. Because the FAC does not meet the more lenient standard under Rule 8(a), the Court need not address whether the FAC is sufficient under Rule 9(b). In the FAC, Plaintiff bases its conversion claim, in part, on the allegation that Defendants acted "with the intent to defraud…." FAC, ¶ 31. In any amended complaint, if Plaintiff intends to base any claim on fraudulent conduct, Plaintiff must meet the more stringent standard under Rule 9(b). *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (holding that even if fraud is not an element of a claim, if a plaintiff alleges fraudulent conduct, the pleading must still satisfy Rule 9(b)).

2. Debtor asserts that the Statute of Frauds bars Plaintiff's allegations. However, if Plaintiff intends to base its claim of quiet title on its resulting trust theory, the Statute of Frauds does not apply. *See Matter of Torrez*, 63 B.R. 751, 754 (B.A.P. 9th Cir. 1986) ("The Statute of Frauds has no applicability to an action for a resulting trust.") (citing *Jones v. Gore*, 141 Cal.App.2d 667, 673 (Ct. App. 1956)).

Tentative ruling regarding the evidentiary objections to Plaintiff's request for judicial notice set forth below:

2:30 PM
CONT... Lev Investments, LLC **Chapter 11**

exs. 8, 9, 12: sustain

Party Information

Debtor(s):

Lev Investments, LLC	Represented By David B Golubchik Juliet Y Oh

Defendant(s):

Lev Investments, LLC	Represented By David B Golubchik Juliet Y Oh Richard P Steelman Jr
DMITRI LUDKOVSKI	Pro Se
RUVIN FEYGENBERG	Represented By John Burgee
MICHAEL LEIZEROVITZ	Represented By John Burgee
SENSIBLE CONSULTING AND	Represented By John Burgee
DOES 1 through 100, inclusive	Pro Se

Movant(s):

RUVIN FEYGENBERG	Represented By John Burgee
MICHAEL LEIZEROVITZ	Represented By John Burgee
SENSIBLE CONSULTING AND	Represented By John Burgee

2:30 PM
CONT... Lev Investments, LLC **Chapter 11**

Plaintiff(s):

FR LLC, a California limited	Represented By Donald W Reid

Trustee(s):

Caroline Renee Djang (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

2:30 PM

1:20-11006 Lev Investments, LLC **Chapter 11**

Adv#: 1:20-01060 FR LLC, a California limited liability company v. Lev Investments, LLC et

#14.00 Defendant Lev Investments, LLC's Motion To Dismiss Plaintiff's First Amended Complaint or, Alternatively, Motion For A More Definite Statement

Docket 34

Tentative Ruling:

See calendar no. 13.

Party Information

Debtor(s):

Lev Investments, LLC	Represented By David B Golubchik Juliet Y Oh

Defendant(s):

Lev Investments, LLC	Represented By David B Golubchik Juliet Y Oh Richard P Steelman Jr
DMITRI LUDKOVSKI	Pro Se
RUVIN FEYGENBERG	Represented By John Burgee
MICHAEL LEIZEROVITZ	Represented By John Burgee
SENSIBLE CONSULTING AND	Represented By John Burgee
DOES 1 through 100, inclusive	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

2:30 PM

CONT... Lev Investments, LLC **Chapter 11**

Movant(s):

Lev Investments, LLC	Represented By David B Golubchik Juliet Y Oh Richard P Steelman Jr

Plaintiff(s):

FR LLC, a California limited	Represented By Donald W Reid

Trustee(s):

Caroline Renee Djang	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

2:30 PM
1:20-11006 Lev Investments, LLC **Chapter 11**
Adv#: 1:20-01060 FR LLC v. Lev Investments, LLC et al

#15.00 Status conference of removed proceeding

fr. 7/15/20; 8/19/20; 8/26/20; 10/7/20; 11/25/20

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC	Represented By David B Golubchik Juliet Y Oh

Defendant(s):

Lev Investments, LLC	Represented By David B Golubchik Juliet Y Oh
DMITRI LUDKOVSKI	Pro Se
RUVIN FEYGENBERG	Represented By John Burgee
MICHAEL LEIZEROVITZ	Represented By John Burgee
SENSIBLE CONSULTING AND	Represented By John Burgee
DOES 1 through 100, inclusive	Pro Se

Plaintiff(s):

FR LLC	Represented By

2:30 PM
CONT... Lev Investments, LLC **Chapter 11**

Michael Shemtoub

Trustee(s):

Caroline Renee Djang (TR) Pro Se

2:30 PM
1:20-11236 Lindsay Hemric **Chapter 13**
Adv#: 1:20-01078 Hemric v. TOTAL LENDER SOLUTIONS, INC et al

#16.00 Motion to Dismiss Adversary Proceeding Complaint

Docket 9

Tentative Ruling:

Grant.

I. BACKGROUND

On July 15, 2020, Lindsay Hemric ("Debtor") filed a chapter 13 petition. On September 7, 2020, Debtor filed a complaint against Total Lender Solutions, Inc. ("TLS"), Joseph Bunton, as Trustee of the Joseph Bunton Trust U/T/A, Joseph Bunton and Ryan Alexander (collectively, "Defendants"). On the same day, Debtor filed a first amended complaint (the "FAC") [doc. 2]. In the FAC, Debtor alleges—

> On January 8, 2015, Debtor entered into a loan transaction under the corporation The Heart Lodge LLC ("Heart Lodge") with Defendants to purchase five parcel properties at 2034 North Topanga Canyon Blvd., Topanga, CA 90290 (the "Property"). In connection with this transaction, Defendants took a security interest in the Property. On February 26, 2020, TLS recorded a Notice of Default regarding the loan. On July 16, 2020, one day after the petition date, Defendants foreclosed on the Property.

On these allegations, Debtor asserts claims for: (A) violation of the automatic stay; (B) declaration of invalidity of the foreclosure sale as violative of the automatic stay; and (C) intentional infliction of emotional distress.

On November 13, 2020, the Court entered an order dismissing Debtor's bankruptcy case [Bankruptcy Docket, doc. 28].

On November 16, 2020, Defendants filed a motion to dismiss the FAC (the "Motion") [doc. 9], arguing that: (A) the Court lacks subject matter jurisdiction over this matter because the Property is not property of the estate; (B) Debtor did not properly serve

Defendants; and (C) Debtor failed to state a claim because the automatic stay did not bar foreclosure of property that is not property of the estate. On December 2, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 18]. In the Opposition, Debtor argues that, as the sole member of Heart Lodge, she had an equitable interest in Heart Lodge and all of Heart Lodge's assets.

On December 8, 2020, Defendants filed a reply to the Opposition [doc. 19], noting that, after the filing of the Motion, Debtor served Another Summons on Defendants. As such, it appears the issue of proper service of process is moot.

II. ANALYSIS

A. Subject Matter Jurisdiction

28 U.S.C. § 1334(b), with regard to bankruptcy cases and proceedings, provides that:

> Except as provided by 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.

1. Arising Under Jurisdiction

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

2. Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id*.

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings . . . ." *In re*

Harris Pine Mills, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11 . . . ." 28 U.S.C. § 157(b)(1); *Stern v. Marshall*, 564 U.S. 462, 475-76, 131 S.Ct. 2594, 2604, 180 L.Ed.2d 475 (2011).

3. Related to Jurisdiction

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

> [T]he outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. 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.

Pegasus Gold Corp., 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

A bankruptcy court's "related to" jurisdiction "cannot be limitless." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, 115 S.Ct. 1493, 1499, 131 L.Ed. 2d 403 (1995). "'[R]elated to' jurisdiction is not as broad in a Chapter 7 liquidation proceeding as in a Chapter 11 reorganization proceeding." *Cardinalli v. Superior Court for Cty. of Monterey*, 2013 WL 5961098, at *3 (N.D. Cal. Nov. 7, 2013).

"[C]ivil proceedings are not within 28 U.S.C. § 1334(b)'s grant of jurisdiction if they… 'are so tangential to the title 11 case or the result of which would have so little impact on the administration of the title 11 case… Put another way, litigation that would not have an impact upon the administration of the bankruptcy case, or on property of the estate, or on the distribution to creditors, cannot find a home in the district court based on the court's bankruptcy jurisdiction.'" *In re Wisdom*, 2015 WL 2128830, at *10 (Bankr. D.

Idaho May 5, 2015) (quoting 1 Collier on Bankruptcy, ¶ 3.01[3][e][v] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014)).

Here, the Court does not have subject matter jurisdiction over Debtor's claim for intentional infliction of emotional distress. This claim does not arise under the Bankruptcy Code. In addition, because this claim exists independent of Debtor's bankruptcy case, there also is no "arising in" jurisdiction. To the extent the Court had "related to" jurisdiction over this claim, Debtor's bankruptcy case has been dismissed, and, as a result, any subject matter jurisdiction over this claim has been extinguished.

With respect to Debtor's claims regarding a violation of the automatic stay, such claims arise under the Bankruptcy Code. However, for the reasons stated below, the Property is not property of the estate and, as a result, the automatic stay does not protect the Property.

B. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard

> A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face. 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. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.
>
> We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network,* 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington,* 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.,* 798 F.2d 1279, 1282 (9th Cir. 1986).

"A court may [also] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id*., quoting *United States v. Richie*, 342 F.3d 903, 908 (9th Cir. 2003). State court pleadings, orders and judgments are subject to judicial notice under Federal Rule of Evidence 201. *See McVey v. McVey*, 26 F.Supp.3d 980, 983-84 (C.D. Cal. 2014) (aggregating cases); *and Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey,* 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith,* 203 F.3d 1122, 1127 (9th Cir. 2000).

C. Violation of the Automatic Stay

Pursuant to 11 U.S.C. § 362(a)—

> Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title...operates as a stay, applicable to all entities, of—

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secured a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or a recover a claim against the Debtor that arose before the commencement of the case;

Here, the allegations in the FAC and the judicially noticeable documents provided by Defendants reflect that *Heart Lodge*, and not Debtor, had legal title to the Property. In the Opposition, Debtor does not dispute this point. Instead, Debtor asserts she maintained an equitable interest in the Property because of her membership interest in Heart Lodge.

As legal support, Debtor references *In re MCEG Prods., Inc.*, 133 B.R. 232 (Bankr. C.D. Cal. 1991). However, *MCEG* is inapposite. There, MCEG, Inc. and 35 subsidiaries (the "Debtor Entities") filed a voluntary chapter 11 petition. *MCEG*, 133 B.R. at 233. Subsequently, the bankruptcy court approved a compromise and sale transaction between the Debtor Entities and certain creditors (the "Compromising Creditors"). *Id*. In relevant part, the agreement provided that the Debtor Entities would transfer the stock of one of the Debtor Entities to one of the Compromising Creditors in exchange for a reduction of the creditors' claims and certain releases. *Id*. Another entity, Pheasantry Films, Inc. ("Pheasantry"), objected to the approval of this compromise and sale, arguing that the agreement negatively impacted Pheasantry's claim against one of the Debtor Entities. *Id*. The bankruptcy court overruled these objections. *Id*., at 234.

After the bankruptcy court approved the compromise and sale, and overruled Pheasantry's objections, Pheasantry filed a petition for damages and injunctive relief against the Compromising Creditors in a different forum. *Id*. Pheasantry did not name any of the Debtor Entities as defendants. *Id*. The injunction relief action sought to enjoin the Compromising Creditors from participating in the compromise and sale. *Id*. In response to the filing of the injunctive relief action, the Debtor Entities and Compromising Creditors sought a temporary restraining order from the bankruptcy

court, arguing that the filing of the injunctive relief action violated the automatic stay. *Id*.

The bankruptcy court agreed, noting that, under 11 U.S.C. § 541(a)(7), property of the estate includes "any interest in property that the estate acquires after the commencement of the case." *Id*. Relying on § 541(a)(7) and a Ninth Circuit Court of Appeals decision, the bankruptcy court held that the compromise and sale agreement was property of the estate and "created specific contract rights subject to the automatic stay." *Id*. (citing *In re Carroll*, 903 F.2d 1266 (9th Cir. 1990)). As such, the court stated that the injunctive relief action violated the automatic stay because it interfered with the *contract and sale agreement*, which was property of the estate. *Id*., at 235.

Thus, although Debtor focuses on the transfer of stock that was part of the compromise and sale agreement, the transfer of stock was not a dispositive issue in the bankruptcy court's holding. Instead, the bankruptcy court focused on the estate's interest in the contract and sale agreement.

Moreover, neither a transfer of stock nor an action to enjoin such transfer is comparable to the facts alleged in the FAC. The allegations do not establish that Defendants' actions (i.e., foreclosure of the Property) violated the automatic stay's protection of *Debtor's membership interest in Heart Lodge*, the only property of the estate relevant to the FAC.

"A limited liability company is an entity distinct from its members." Cal. Corp. Code § 17701.04(a). The debts, obligations or other liabilities of a limited liability company "are solely the debts, obligations, or other liabilities of the limited liability company" and "do not become the debts, obligations, or other liabilities of a member… solely by reason of the member acting as a member… for the limited liability company." Cal. Corp. Code § 17703.04(a)(1)-(2). In addition, "a member in a limited liability company does not hold any interest in the real property owned by the limited liability company." *Fashion Valley Mall, LLC v. County of San Diego*, 176 Cal.App.4th 871, 886 (Ct. App. 2009). "Instead, a member possesses a personal property interest in its limited liability company interest." *Id.*; *see also Swart Enterprises, Inc. v. Franchise Tax Bd.*, 7 Cal.App.5th 497, 510 (Ct. App. 2017) ("members hold no direct ownership interest in the company's specific property"). "Because members of [a limited liability company] hold no direct ownership interest in the company's assets, the members cannot be directly injured when the company is improperly deprived of those assets." *PacLink Commc'ns Int'l, Inc. v. Superior Court*, 90 CalApp.4th 958, 964 (Ct. App. 2001) (internal citation omitted).

Federal courts that have addressed the issue of whether the automatic stay applies to assets of a nondebtor entity have decided that it does not. "Though the automatic stay in the personal bankruptcy estate was still effective, we agree with the bankruptcy court that an automatic stay does not extend to the assets of a corporation in which the debtor has an interest, even if the interest is 100% of the corporate stock." *In re Furlong*, 660 F.3d 81, 89–90 (1st Cir. 2011) (internal quotation omitted). The First Circuit Court of Appeals noted that "[t]his proposition is well-settled." *Id*., at 90 n.9 (collecting cases from multiple circuits).

Although there is sparse in-circuit authority on the specific issue presented here, it appears courts within the Ninth Circuit would not deviate from this "well-settled" proposition. For instance, in *In re Calvert*, 135 B.R. 398 (Bankr. S.D. Cal. 1991), the debtor was a shareholder in a nondebtor corporation. *Calvert*, 135 B.R. at 399. Postpetition, the nondebtor corporation gave notice of a special meeting of the board, at which time the board authorized the corporation to issue additional shares of stock in satisfaction of a debt owed by the corporation. *Id*. The impact of the issuance of additional shares of stock was to reduce the percent of ownership represented by the number of shares held by the bankruptcy estate. *Id*.

The chapter 11 trustee asserted that the dilution of the estate's shares violated the automatic stay. *Id*., at 400. In response, and despite disagreeing that the automatic stay was implicated, the corporation filed a motion for *nunc pro tunc* relief from the automatic stay. *Id*. The bankruptcy court framed the issue as follows: "the basic issue is whether the intangible rights and obligations of stock ownership, which are property of a debtor's estate, are sufficiently broad to preclude a non-debtor corporation from taking actions which may have an effect on the value of that stock." *Id*. After reviewing several out-of-circuit authorities, the court reached the following conclusion—

> This Court agrees with the rationale of the foregoing cases. [The nondebtor corporation] is a separate legal entity and there has been no suggestion that it is a sham corporation or that it is the alter ego of the debtor. Indeed, the few facts before the Court suggest the contrary. While the trustee's argument has appeal in circumstances like the present, this Court has not found any satisfactory way to draw a meaningful line separating the circumstances and incidences of stock ownership which would implicate the automatic stay from those that would not. In this

> Court's view, the better rule is that [the nondebtor corporation] is a separate legal entity entitled to act through its duly constituted board and officers, even though those actions may have an effect on the value of shares of stock held by the estates of debtors. Accordingly, this Court concludes that the *automatic stay does not apply* to actions of the board of the corporation in determining to exchange debt for equity with another shareholder, thereby giving that shareholder a majority interest in the corporation.

Id., at 402 (emphasis added). [FN1]. As such, even where a debtor's personal property interest in an entity is devalued by actions taken against a nondebtor entity, the automatic stay is not implicated. Approximately two weeks ago, in a different context, the Bankruptcy Appellate Panel of the Ninth Circuit held that an individual debtor may not claim a homestead exemption in real property owned by the debtor's limited liability company—

> [The debtor] has never identified any beneficial or equitable interest in the Property to support his homestead exemption claim and concedes that he has no legal interest in it. Instead, he listed his interest in the LLC as exempt under California's residential exemption, C.C.P. § 704.730. But under California law a limited liability company is a separate and distinct legal entity from its owners or members. Consequently, limited liability company members have no interest in the company's assets. California's residential exemption is inapplicable to [the debtor's] interest in the LLC, which constitutes a personal property interest outside the statutory definition of a homestead under C.C.P. § 704.710(c).

In re Schaefers, 2020 WL 7043564, at *4 (B.A.P. 9th Cir. Dec. 1, 2020).

Although outside of the Ninth Circuit, *Kreisler v. Goldberg*, 478 F.3d 209 (4th Cir. 2007), is directly on point. There, one of the debtors' wholly owned subsidiaries, a limited liability company (the "Subsidiary LLC"), was a party to a ground rent lease on real property. *Kreisler*, 478 F.3d at 211. The property was titled in the Subsidiary LLC's name, and this interest in the property was the Subsidiary LLC's sole asset and the reason for the company's organization. *Id*., at 211-12. Prepetition, the owner of the ground rent filed a complaint for ejectment in state court and obtained a default judgment against the Subsidiary LLC. *Id*., at 212.

Postpetition, the owner of the ground rent moved for relief from the automatic stay. *Id*. The bankruptcy court provided such relief and, as a result, the property was sold at auction. *Id*. The debtors then filed a motion for violation of the automatic stay, seeking to void the ejectment action and to compel turnover of the property to the estate. *Id*. The bankruptcy court denied the motion and a district court affirmed the order. *Id*. On appeal, the Fourth Circuit Court of Appeals agreed with the bankruptcy court, holding—

> The fact that a parent corporation has an ownership interest in a subsidiary, however, does not give the parent any direct interest in the *assets* of the subsidiary. Although [one of the debtors] could have established an ownership interest in the property, it chose not to do so. Instead, it created an LLC for the purpose of holding title to the property. Having assumed whatever benefits flowed from that decision, it cannot now ignore the existence of the LLC in order to escape its disadvantages. *See Terry v. Yancey,* 344 F.2d 789 (4th Cir. 1965) (explaining that "where an individual creates a corporation as a means of carrying out his business purposes he may not ignore the existence of the corporation in order to avoid its disadvantages"). The district court therefore correctly distinguished between [the debtor's] interest in [the Subsidiary LLC] and [the Subsidiary LLC's] direct interest in the [property]. The assets of [the Subsidiary LLC] belonged to [the Subsidiary LLC] and did not form part of [the debtors'] bankruptcy estate. Consequently, an action to obtain possession or exercise control over [the Subsidiary LLC's] property was not an action to obtain possession or exercise control over property of [the] bankruptcy estate.

Id., at 214 (emphasis in *Kreisler*). Moreover, in response to the debtors' argument that disposal of the property would cause the estate's interest in the Subsidiary LLC to lose value, the court stated—

> [The Subsidiary LLC] existed for the sole purpose of holding title to the property and had no other assets. [The debtor] contends that, as a result, [the debtor's] ownership interest in [the Subsidiary LLC] would lose all value if [the Subsidiary LLC] were ejected from the property. The fact that [the debtor's] interest in [the Subsidiary LLC] may lose value, however, is not dispositive. The nature and extent of [the debtor's]

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CONT... Lindsay Hemric **Chapter 13**

interest in [the Subsidiary LLC] remains unchanged by [the Subsidiary LLC's] loss of the property.

Id.; *see also In re HSM Kennewick, L.P.*, 347 B.R. 569, 572 (Bankr. N.D. Tex. 2006) ("[The debtor] does not possess an interest to specific assets or property of [the LLC], as it is only a member of the LLC; thus the automatic stay does not apply to protect it.").

In light of these authorities, Debtor cannot state a claim for violation of the automatic stay for the alleged foreclosure sale of property owned by Debtor's limited liability company. Debtor's allegations that she is the sole member of Heart Lodge, or that her interest in Heart Lodge will be devalued by the foreclosure, does not change the analysis. Because the FAC cannot be cured by an amendment, the Court will dismiss the FAC without leave to amend. *See Jackson*, 353 F.3d at 758.

III. CONCLUSION

The Court will dismiss the FAC without leave to amend.

Defendants must submit an order within seven (7) days.

FOOTNOTES

1. *Calvert* involved a corporation instead of a limited liability company. However, for purposes of this discussion, the result is the same whether the nondebtor entity is a limited liability company or a corporation. *See, e.g. Denevi v. LGCC, LLC,* 121 Cal.App.4th 1211, 1214 n.1 (Ct. App. 2004) ("Like corporate shareholders, members of a limited liability company hold no direct ownership interest in the company's assets").

Party Information

Debtor(s):

Lindsay Hemric — Represented By
Ronda Baldwin-Kennedy

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 16, 2020 **Hearing Room 301**

2:30 PM

CONT... Lindsay Hemric **Chapter 13**

Defendant(s):

TOTAL LENDER SOLUTIONS,	Represented By Marisol A Nagata
JOSEPH BUNTON	Pro Se
Ryan Alexander	Pro Se
Joseph Bunton, as Trustee of the	Pro Se

Movant(s):

TOTAL LENDER SOLUTIONS,	Represented By Marisol A Nagata

Plaintiff(s):

Lindsay Hemric	Represented By Ronda Baldwin-Kennedy

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se