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**United States District Court
Central District of California**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 STEPHEN C. RONCA, CYNTHIA

15 RONCA, and JOSEPH RONCA,

16 Defendants.

Case No. 2:17-cv-08044-ODW (FFMx)

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS [35]**

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I. INTRODUCTION

19 The United States of America (the “Government”) brings two claims against
20 Defendants Stephen Ronca (“Stephen”), Cynthia Ronca (“Cynthia”), and Joseph
21 Ronca (“Joseph”) (collectively, “Defendants”) under the Federal Debt Collection
22 Procedures Act, 28 U.S.C. § 3001, *et seq.* The Government files this civil action to
23 recover proceeds from the sale of real property on October 26, 2017 to satisfy a
24 restitution debt. (Compl. ¶ 1.)

25 Defendant Cynthia moves to dismiss on the grounds that the Government failed
26 to: (1) serve Cynthia in a timely manner; (2) state a claim; and (3) join the escrow
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1 company under Rule 19. (*See generally* Mot. to Dismiss Compl. (“Mot.”), ECF
2 No. 35.)¹

3 For the reasons that follow, the Court **DENIES** Defendant’s Motion to Dismiss.

4 **II. BACKGROUND**

5 This is an action to recover proceeds of a real property sale to satisfy restitution
6 owed by Stephen Ronca for embezzling money. (Compl. ¶ 9.) Stephen, Cynthia, and
7 Joseph are siblings. (Compl. ¶¶ 5–7.) Stephen is a licensed attorney. (Compl. ¶ 9.)
8 On May 30, 2017, the Government filed an indictment against Stephen for embezzling
9 money from his client.² (Compl. ¶ 9.)

10 The real property in issue is located at 625 Al-Hil Drive, San Luis Obispo, CA
11 93405 (“Al-Hil Property”). (Compl. ¶ 10.) In February 2008, Stephen became the
12 sole owner of the Al-Hil Property through two grant deeds. (Compl. ¶ 11.) In the first
13 grant deed, John Ronca, father of the Defendants, transferred half of the interest to
14 Stephen and half to his revocable trust. (Compl. Ex. A, ECF No. 1-1.) Three weeks
15 later, John Ronca transferred the half interest in his trust to Stephen through a second
16 deed. (Compl. Ex. B, ECF No. 1-1.)

17 On October 26, 2017, Stephen sold the Al-Hil Property to “Trustees of the
18 Shotts Living Trust dated August 22, 2000” for a net proceed of \$394,560.97, which
19 was deposited in Cynthia’s account. (Compl. ¶¶ 12–14.) The following day, Cynthia
20 withdrew three cashier’s checks in the amount of \$100,000, \$111,500, and \$150,700.
21 (Compl. ¶ 15.) Cynthia deposited the checks in the amount of \$100,000 and \$111,500
22 in two separate bank accounts under her name. (Compl. ¶ 16.) She then immediately
23 withdrew \$100,000 from the account in which she had deposited the \$100,000 check.
24 (Compl. ¶ 16.) Cynthia gave Joseph the third check in the amount of \$150,700.

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¹ Having carefully considered the papers filed in connection to the instant Motion, the Court deemed
27 the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

28 ² When the Government filed the Complaint, the related criminal matter was not resolved. Since
then, Stephen was sentenced and ordered to pay restitution of \$483,411 pursuant to the Mandatory
Victims Restitution Act. (Opp’n to Mot. (“Opp’n”) 3, ECF No. 46.)

1 (Compl. ¶ 17.)

2 On November 3, 2017, the Government brought suit against Defendants
3 alleging fraudulent transfers of funds pursuant to 28 U.S.C. §§ 3304(b)(1)(A) &
4 (b)(1)(B). (*See* Compl.) From December 13, 2017 to January 16, 2019, this civil
5 action was stayed pending resolution of the criminal matter. (*See* Order Regarding
6 Deposit of Funds into the Ct.’s Registry, ECF No. 12; Order Lifting Stay, ECF
7 No. 21.) On May 7, 2019, Defendant Cynthia filed a motion to dismiss. (*See* Mot.)

8 III. LEGAL STANDARD

9 A. 12(b)(5)

10 Under Federal Rule of Civil Procedure (“Rule”) 12(b)(5), a party may seek
11 dismissal of a complaint for insufficient service of process. Fed. R. Civ. P. 12(b)(5).
12 “Once service is challenged, [the] plaintiff[] bear[s] the burden of establishing that
13 service was valid under Rule 4.” *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir.
14 2004).

15 B. 12(b)(6)

16 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
17 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
18 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). To
19 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading
20 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*
21 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to
22 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550
23 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual matter,
24 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
25 *Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

26 The determination of whether a complaint satisfies the plausibility standard is a
27 “context-specific task that requires the reviewing court to draw on its judicial
28 experience and common sense.” *Id.* at 679. A court is generally limited to the

1 pleadings and must construe all “factual allegations set forth in the complaint . . . as
2 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*,
3 250 F.3d 668, 679 (9th Cir. 2001). But a court need not blindly accept conclusory
4 allegations, unwarranted deductions of fact, and unreasonable inferences. *Sprewell v.*
5 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

6 Plaintiffs pleading fraud must do so with heightened particularity. *See* Fed. R.
7 Civ. P. 9(b). Rule 9(b) establishes that an allegation of “fraud or mistake must state
8 with particularity the circumstances constituting fraud.” The “circumstances”
9 required by Rule 9(b) are the “who, what, when, when, where, and how” of the
10 fraudulent activity. *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th
11 Cir. 2011). In addition, the allegation “must set forth what is false or misleading
12 about a statement, and why it is false.” *Id.* This heightened pleading standard ensures
13 that “allegations of fraud are specific enough to give defendants notice of the
14 particular misconduct which is alleged to constitute the fraud charged so that they can
15 defend against the charge and not just deny that they have done anything wrong.”
16 *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985).

17 When a district court grants a motion to dismiss, it should provide leave to
18 amend unless it is clear that the complaint could not be saved by any amendment.
19 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).
20 Leave to amend, however, “is properly denied . . . if amendment would be futile.”
21 *Carrico v. City & Cty. of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011).

22 **C. 12(b)(7)**

23 Under Rule 12(b)(7), a party may seek dismissal of a complaint for failure to
24 join an indispensable party under Rule 19. Fed. R. Civ. P. 12(b)(7). Rule 19 states
25 “[a] person who is subject to service of process and whose joinder will not deprive the
26 court of subject-matter jurisdiction must be joined” if “in that person’s absence, the
27 court cannot accord complete relief among existing parties.” Fed. R. Civ. P. 19. If
28 joinder is not feasible, “the court must determine whether, in equity and good

1 conscience, the action should proceed among the existing parties or should be
2 dismissed.” *Id.*

3 IV. DISCUSSION

4 A. Timely Service of Process

5 Defendant Cynthia alleges that the Government failed to timely serve process
6 and therefore, moves to dismiss the claim against her. (Mot. 3.) Rule 4 states:

7 If a defendant is not served within 90 days after the complaint is filed, the
8 court--on motion or on its own after notice to the plaintiff--must dismiss
9 the action without prejudice against that defendant or order that service
10 be made within a specified time. *But if the plaintiff shows good cause for
the failure, the court must extend the time for service for an appropriate
period.*

11 Fed. R. Civ. P. 4(m) (emphasis added). A showing of good cause under Rule 4(m)
12 means, “[a]t a minimum ... ‘excusable neglect,’” and may also require a showing of
13 the following three factors: “(a) the party to be served personally received actual
14 notice of the lawsuit; (b) the defendant would suffer no prejudice; and (c) plaintiff
15 would be severely prejudiced if his complaint were dismissed.” *Almont Ambulatory
16 Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, 99 F. Supp. 3d 1110, 1186 (C.D. Cal.
17 2015) (citing *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir.1991)).

18 Excluding the stay, the Government served Cynthia 131 days after it filed the
19 Complaint. (Mot. 4.) The Government states that it diligently attempted to serve
20 process at various locations between November 8, 2017 and December 1, 2017 and
21 also after the stay was lifted. (Opp’n 3, 4.) The Government attempted to serve
22 process at three separate addresses on six different dates without success. (Decl. of
23 Indira J. Cameron-Banks, ECF No. 46-1.) On April 18, 2019, the Government finally
24 served process on Cynthia, while she attended a family court hearing. (Decl. of Indira
25 J. Cameron-Banks.) As Cynthia seems to have personal notice of the case and the
26 Government has made diligent efforts to serve process, the Government shows good
27 cause for the failure to serve within 90 days. *See Hendry v. Schneider*, 116 F3d 446,
28 449 (10th Cir. 1997) (finding defendant’s evasion of service constituted “good cause”

1 for delay in effecting service). Thus, the Court must extend the time for service per
2 Rule 4(m).

3 Accordingly, Cynthia was properly served on April 18, 2019 and the Court
4 **DENIES** Cynthia’s Motion on this basis.

5 **B. Federal Debt Collection Procedures Act**

6 The Federal Debt Collection Procedures Act (“FDCPA”) forbids fraudulent
7 transfers to avoid satisfaction of a debt to the United States “whether such debt arises
8 before or after the transfer is made.” 28 U.S.C. § 3304(b)(1). Under section
9 (b)(1)(A), a transfer is fraudulent, “if the debtor makes the transfer . . . with actual
10 intent to hinder, delay, or defraud a creditor.” *Id.* Alternatively, a transfer is
11 fraudulent under section (b)(1)(B) “if the debtor makes the transfer . . . without
12 receiving a reasonably equivalent value in exchange for the transfer” and either was
13 engaged in “a transaction for which the remaining assets of the debtor were
14 unreasonably small in relation to the business or transaction” or intended to incur
15 “debts beyond his ability to pay as they became due.” *Id.* In determining actual
16 intent, the Court may consider whether:

- 17 (A) the transfer or obligation was to an insider;
- 18 (B) the debtor retained possession or control of the property transferred
after the transfer;
- 19 (C) the transfer or obligation was disclosed or concealed;
- 20 (D) before the transfer was made or obligation was incurred, the debtor
had been sued or threatened with suit;
- 21 (E) the transfer was of substantially all the debtor's assets;
- 22 (F) the debtor absconded;
- 23 (G) the debtor removed or concealed assets;
- 24 (H) the value of the consideration received by the debtor was reasonably
equivalent to the value of the asset transferred or the amount of the
25 obligation incurred;
- 26 (I) the debtor was insolvent or became insolvent shortly after the transfer
was made or the obligation was incurred;
- 27 (J) the transfer occurred shortly before or shortly after a substantial debt
was incurred; and
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1 (K) the debtor transferred the essential assets of the business to a lienor
2 who transferred the assets to an insider of the debtor.

3 28 U.S.C. § 3304(b)(2). The government claims a violation of both subsection
4 (b)(1)(A) and (b)(1)(B).

5 Cynthia’s primary argument is that Defendants are mere recipients of the funds
6 and that the Government fails to provide facts to allow the Court to infer that the
7 Defendants were involved in a fraudulent transfer. (Mot. 5.) However, the
8 Government in its Complaint established a string of transactions that could plausibly
9 establish a violation of the FDCPA. For example, the Government alleges that
10 Cynthia received \$394,560.97 in her account, withdrew three cashier’s checks in the
11 amount of \$100,000, \$111,500, and \$150,700, and deposited the checks in the amount
12 of \$100,000 and \$111,500 in two of her bank accounts, but immediately withdrew
13 \$100,000 from the account in which she had deposited the \$100,000 check. (Compl.
14 ¶¶ 12–17.) Cynthia then gave Joseph the third check in the amount of \$150,700.
15 (Compl. ¶ 17.) The scenario is not as Cynthia alleges—that Defendants received cash
16 from the escrow company and were not involved in any transfer of funds. (Mot. 5.)
17 Thus, the Court finds that Cynthia plausibly made the transfers “with actual intent to
18 hinder, delay, or defraud a creditor.” *See United States v. LeBeau*, No. 17CV1046-
19 GPC(WVG), 2017 WL 6270474, at *6 (S.D. Cal. Dec. 8, 2017) (finding the plaintiff
20 alleged sufficient facts when it alleged two spouses transferred the property back and
21 forth to each other without adequate consideration); *United States v. Crisp*, 190 F.R.D.
22 546, 548–555 (E.D. Cal. 1999) (finding the government alleged facts sufficient to
23 satisfy elements of 28 U.S.C. § 3304(b) by pleading that defendants’ transfer of real
24 property from two individuals to a limited partnership was fraudulent).

25 Accordingly, the Court **DENIES** the Motion as to this claim.

26 **C. Indispensable Party**

27 Cynthia argues that by failing to join the escrow company that disbursed the
28 funds into her account, the Government failed to join an indispensable party.

1 (Mot. 6.) Under Rule 19 section (a), the Court must first determine if the escrow
2 company, the non-party or absentee, is a person required to be joined. *E.E.O.C. v.*
3 *Peabody W. Coal Co.*, 610 F.3d 1070, 1078 (9th Cir. 2010). Only if the Court
4 determines the absentee is required must the Court consider whether joinder is
5 feasible. *Id.* An absentee is necessary either if the Court “cannot accord complete
6 relief among the existing parties” or if the absentee “claims an interest relating to the
7 subject of the action.” Fed. R. Civ. P. 19(a)(1)(A) & (a)(1)(B).

8 Here, Cynthia and her siblings are in complete possession of the net proceeds
9 that the Government seeks. Thus, despite Defendants’ frustration that the escrow
10 company was not joined, the Court can accord complete relief among the existing
11 parties. *See Eldredge v. Carpenters 46 N. Cal. Ctys. Joint Apprenticeship & Training*
12 *Comm.*, 662 F.2d 534, 537 (9th Cir.1981) (applying “complete relief” only to “persons
13 already parties, not as between a party and the absent person whose joinder is
14 sought”); *Hoang v. Vinh Phat Supermarket, Inc.*, No. 2:13-cv-00724 WBS, 2013 WL
15 4095042, at *16 (E.D. Cal. Aug. 13, 2013) (finding that the court could accord
16 complete relief between the named parties despite the individual defendants’
17 frustration that other fellow shareholders were not joined in the suit).

18 Furthermore, since the escrow company relinquished the funds in question upon
19 completion of the real property sale, the escrow company has no interest relating to
20 the subject of the action. Moreover, the escrow company has not asserted any interest
21 in the funds at issue. *See Soto v. Los Angeles Cty. Flood Control Dist.*, No.15-cv-787
22 FFM, 2016 WL 11265023, at *3 (C.D. Cal. May 24, 2016) (finding that where a party
23 does not assert an interest relating to the subject of the action the subsection does not
24 apply). Therefore, the escrow company is not a necessary party.³

25 Accordingly, the Court **DENIES** Defendant’s Motion to Dismiss for failure to
26 join an indispensable party.

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28 ³ Since the Court does not find that the escrow company is a necessary party, the Court does not
address whether joinder would be feasible.

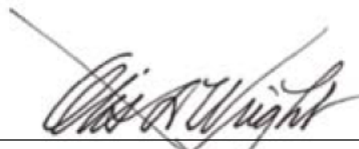
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IV. CONCLUSION

For the reasons provided above, the Court **DENIES** Defendant's Motion. Within fourteen days from this Order, Defendant must file an answer to the Complaint.

IT IS SO ORDERED.

October 25, 2019



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE