

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN ARDEN; CYNTHIA SHERIDAN,  
Plaintiffs,  
v.  
MICHAEL OLIVER,  
Defendant.

No. 2:14-cv-1777 TLN DAD PS

FINDINGS AND RECOMMENDATIONS

Plaintiffs John Arden and Cynthia Sheridan are proceeding pro se and, therefore, this matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). The matter came before the court on November 7, 2014, for hearing of defendant’s motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Attorney Peter Cuttitta appeared telephonically on behalf of the defendant. John Arden appeared in person on his own behalf and Cynthia Sheridan appeared in person on her own behalf.

For the reasons set forth below, the undersigned will recommend that defendant’s motion to dismiss be granted.

PROCEDURAL BACKGROUND

Plaintiff commenced this action on July 28, 2014, by filing a complaint and paying the required filing fee. (Dkt. No. 1.) On September 24, 2014, defendant Michael Oliver filed a motion to dismiss but noticed the motion for hearing before the assigned District Judge. (Dkt.

1 No. 7.) On September 25, 2014, the assigned District Judge referred this matter to the  
2 undersigned pursuant to Local Rule 302(c)(21). (Dkt. No. 8.) That same day, defendant re-  
3 noticed the motion to dismiss for hearing before the undersigned. (Dkt. No. 9.)

4 On October 9, 2014, defendant continued the hearing of the motion to dismiss to  
5 November 7, 2014. (Dkt. No. 10.) Plaintiffs filed opposition to the motion to dismiss on October  
6 24, 2014. (Dkt. No. 11.) Defendant filed a reply on October 29, 2014. (Dkt. No. 12.)

#### 7 FACTUAL ALLEGATIONS

8 Plaintiffs' complaint alleges, in part, as follows. In 2004, plaintiffs leased the property  
9 located at 9980 North Lake Boulevard, Kings Beach, California, and 2 North Lake Highway,  
10 Crystal Bay, Nevada, ("Property"), from Lowell Thomas and Sybil Thomas. (Compl. (Dkt. No.  
11 1) at 4-5.) The property is unusual, in that it "comprised of two contiguous parcels, one lying  
12 in California and the other in Nevada." (Id. at 5.) Plaintiffs, however, became involved in "[a]  
13 long and acrimonious series of legal disputes" with Lowell and Sybil Thomas and eventually  
14 were "forced to seek bankruptcy court relief." (Id.) At some, defendant Oliver approached  
15 plaintiff Arden and expressed "his love" of the property and an "interest in acquiring it." (Id. at  
16 6.) Oliver wished to remodel the property but plaintiff Arden "told Oliver that his proposed  
17 tenant improvements and the rent proposed were too low in view of Plaintiffs' investment in  
18 developing" the property. (Id.) "Oliver was upset Plaintiff Arden rejected his offer, disregarded  
19 Arden's rejection," and "deliberately sought Thomas, the lien-holder, to explore alternative ways  
20 he might circumvent Plaintiffs and acquire the property." (Id. at 7.) As a result of Oliver's  
21 efforts he "knew or had reason to believe Thomas, et al.," were using "illegal self-help means to  
22 frustrate Plaintiffs' reorganization" and Oliver "agreed to assist in Plaintiff's undoing, if it led to  
23 Oliver acquiring the property." (Id.) In October of 2010, Thomas contracted to sell to Oliver  
24 "the Note and Deeds of Trust on Plaintiffs' property." (Id.)

25 In February of 2011, Oliver and Thomas signed an "Addendum to Purchase Contract for  
26 First Deed of Trust," which provided that Oliver had "the right to pay off any taxes and liens" on  
27 the property and deduct those costs from the "principal balance and balloon payments." (Id. at 8.)  
28 In March of 2011, "Oliver and Thomas met" and "agreed Oliver would be the negotiator," in

1 settlement talks with the plaintiffs and that “Thomas would pay Oliver up to \$25,000 to stop all  
2 grievances between [plaintiffs] and the Thomases.” (Id.) In April of 2011, Oliver and Arden met  
3 to discuss “a proposal to acquire Plaintiffs’ property . . . .” (Id.) Oliver acknowledged that  
4 plaintiffs’ were receiving “no income from the unopened business, mounting debts and the  
5 particular concern that Plaintiffs’ home was in foreclosure.” (Id. at 9.) Arden stated that that any  
6 sale or settlement “would require assistance of the bankruptcy court to adjudicate existing issues  
7 and resolve debts and liens.” (Id.)

8 After further discussion, Oliver and Arden agreed that “Plaintiffs would be absolutely  
9 absolved, indemnified, and held harmless of any financial claims,” that the property would be  
10 transferred “AS-IS,” without a liability against plaintiffs and that Plaintiffs would receive  
11 \$40,000, which would be placed in an escrow account. (Id. at 10.) To record the agreements,  
12 plaintiffs and Oliver executed an “ADDENDUM No. 1 ESSENTIAL CONDITIONS” document.  
13 (Id. at 11.) After all involved signed the document, Oliver typed the information into a  
14 Commercial Property Purchase Agreement and Joint Escrow Instructions. (Id. at 12.)

15 On August 29, 2011, after a series of disagreements, “Plaintiff Arden was emailed by  
16 Rhonda Evans of Fidelity Title” who forwarded from Oliver a “CANCELLATION OF  
17 CONTRACT, RELEASE OF DEPOSIT AND JOINT ESCROW INSTRUCTIONS,” instructing  
18 Fidelity to cancel the parties’ transaction. (Id. at 16.) Plaintiffs demanded the \$40,000 from the  
19 escrow account and Rhonda Evans replied that “Oliver never made the deposit.” (Id.)

20 Pursuant to these allegations, the complaint alleges causes of action for violation of 11  
21 U.S.C. § 362, intentional interference with prospective economic advantage, intentional  
22 interference with contractual relations, fraudulent concealment, fraudulent misrepresentation,  
23 fraud in the inducement, breach of contract, breach of the implied covenant of good faith and fair  
24 dealing, violation of California Business and Professions Code § 10176 and § 10177, and the  
25 intentional infliction of emotional distress.

26 ////

27 ////

28 ////



1 12(b)(1) motion attacks the existence of subject matter jurisdiction in fact, plaintiff has the burden  
2 of establishing that such jurisdiction does in fact exist. Thornhill Publ'g Co., 594 F.2d at 733.

3 II. Legal Standards Applicable to Motions to Dismiss Pursuant to Rule 12(b)(6)

4 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal  
5 sufficiency of the complaint. N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir.  
6 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of  
7 sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep't, 901  
8 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to  
9 relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A  
10 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
11 the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v.  
12 Iqbal, 556 U.S. 662, 678 (2009).

13 In determining whether a complaint states a claim on which relief may be granted, the  
14 court accepts as true the allegations in the complaint and construes the allegations in the light  
15 most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Love v.  
16 United States, 915 F.2d 1242, 1245 (9th Cir. 1989). In general, pro se complaints are held to less  
17 stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519,  
18 520-21 (1972). However, the court need not assume the truth of legal conclusions cast in the  
19 form of factual allegations. United States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th  
20 Cir. 1986). While Rule 8(a) does not require detailed factual allegations, “it demands more than  
21 an unadorned, the defendant-unlawfully-harmed-me accusation.” Iqbal, 556 U.S. at 678. A  
22 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the  
23 elements of a cause of action.” Twombly, 550 U.S. at 555. See also Iqbal, 556 U.S. at 676  
24 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
25 statements, do not suffice.”). Moreover, it is inappropriate to assume that the plaintiff “can prove  
26 facts which it has not alleged or that the defendants have violated the . . . laws in ways that have  
27 not been alleged.” Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters,  
28 459 U.S. 519, 526 (1983).

1 In ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), the court is permitted  
2 to consider material which is properly submitted as part of the complaint, documents that are not  
3 physically attached to the complaint if their authenticity is not contested and the plaintiff's  
4 complaint necessarily relies on them, and matters of public record. Lee v. City of Los Angeles,  
5 250 F.3d 668, 688-89 (9th Cir. 2001).

#### 6 ANALYSIS

7 Plaintiffs' complaint asserts that the court has "original jurisdiction" over this action  
8 pursuant to 28 U.S.C. § 1334, because the complaint's first cause of action alleges a violation of  
9 11 U.S.C. § 362(a), the automatic stay provision of the Bankruptcy Code.<sup>2</sup> (Compl. (Dkt. No. 1)  
10 at 3.) Title 28 U.S.C. § 1334(a) provides, in part, that "the district courts shall have original and  
11 exclusive jurisdiction of all cases under title 11."

12 However, bankruptcy courts have jurisdiction over "all civil proceedings arising under  
13 title 11, or arising in or related to cases under title 11." In re Davis, 177 B.R. 907, 912 (9th Cir.  
14 BAP 1995). See also Eastern Equipment and Services Corp. v. Factory Point Nat. Bank,  
15 Bennington, 236 F.3d 117, 121 (2nd Cir. 2001) ("Courts that have examined this issue have held  
16 that the federal Bankruptcy Code preempts any state law claims for a violation of the automatic  
17 stay, and precludes jurisdiction in the district courts. Any relief for a violation of the stay must be  
18 sought in the Bankruptcy Court."); MSR Exploration, Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 916  
19 (9th Cir. 1996) ("We hold that MSR's malicious prosecution action against the Producers is  
20 completely preempted by the structure and purpose of the Bankruptcy Code. Therefore, MSR's  
21 purported action must, in fact, be a federal claim. That claim, however, should have been brought  
22 in the bankruptcy court itself, and not as a separate action in the district court. Thus, the district  
23 court properly determined that it lacked jurisdiction to hear the matter."). But see Justice  
24 Cometh, Ltd. v. Lambert, 426 F.3d 1342, 1343 (11th Cir. 2005) ("the explicit § 1334 grant of  
25 original jurisdiction over Title 11 cases clearly forecloses a conclusion that the district court  
26 lacked subject matter jurisdiction over this case").

---

27 <sup>2</sup> The remaining causes of action of plaintiffs' complaint are all based on the alleged violation of  
28 state law.

1           Moreover, as explained by another judge of this court:

2                       Pursuant to 28 U.S.C. § 157(a), each district court may provide that  
3                       any or all cases under title 11 and any or all proceedings arising  
4                       under title 11 or arising in or related to a case under title 11 shall be  
5                       referred to the bankruptcy judges for the district. Furthermore, the  
6                       Eastern District of California’s Local General Order 1824 states:  
7                       this Court hereby refers to the bankruptcy judges of this district all  
8                       cases under title 11, and all proceedings arising under title 11 or  
                      rising in or related to cases under title 11. An action alleging a  
                      willful violation of the automatic stay is created by § 362(h) of title  
                      11 of the United States Code, and therefore arises under title 11 for  
                      purposes of 28 U.S.C. § 157(a) and Local General Order 182.  
                      Thus, the bankruptcy court has subject matter jurisdiction over all  
                      claims alleging willful violation of the automatic stay[.]

9           Wordtech Systems, Inc. v. Integrated Network Solutions, Inc., No. 2:04-cv-1971-MCE-EFB,  
10           2012 WL 5464218, at \*1-2 (E.D. Cal. Nov. 7, 2012) (dismissing a defendant’s motion seeking  
11           sanctions for violation of 11 U.S.C. § 362(a)(1) due to lack of subject matter jurisdiction)  
12           (alterations, citations and quotations omitted).

13           The undersigned concludes that the complaint’s first cause of action for violation of 11  
14           U.S.C. § 362 should be dismissed for a lack of subject matter jurisdiction. See Swartz v.  
15           Nationstar Mortg., LLC, et al., No. CV 14-08649 BRO (JCx), 2015 WL 846789 at \*9 (C.D. Cal.  
16           Feb. 26, 2015) (dismissing claims alleging violations of 11 U.S.C. § 362 in light of the court’s  
17           Local Rule referring all proceedings arising under Title 11 to bankruptcy judges); Zimmerman v.  
18           Bellows, 988 F.Supp.2d 1026, 1034 (D. Minn. 2013) (“Count V alleges that Defendants violated  
19           the automatic stay, for which Zimmerman seeks relief under 11 U.S.C. § 362(k). Though no  
20           party has raised the issue, the Court determines that it lacks jurisdiction to consider this claim.”);  
21           Wordtech Systems, Inc., 2012 WL 5464218, at \*2 (“Because Defendant Khatemi’s claim alleging  
22           that Plaintiff and Plaintiff’s attorneys willfully violated the bankruptcy court’s automatic stay  
23           arises under title 11, the bankruptcy court has subject matter jurisdiction over Defendant  
24           Khatemi’s claim.”); Guancione v. Wachovia Mortg. Corp., No. 5:10-CV-3166 JF (HRL), 2010  
25           WL 2991728, at \*3 (N.D. Cal. July 28, 2010) (“to the extent that Plaintiff could establish a  
26           violation of the automatic stay, their remedy lies within the jurisdiction of the bankruptcy court”);  
27           Radke v. Holbrook, No. CV 09-1355 GAF (VBK), 2010 WL 9010982, at \*7 (C.D. Cal. May 11,  
28           2010) (“Plaintiff’s allegations concerning the violation of the automatic stay in a bankruptcy

1 proceeding must be raised in the Bankruptcy Court, or in the California Court of Appeal in a  
2 direct appeal. A Federal District Court does not have original jurisdiction over bankruptcy  
3 matters.”); Hegmann v. Town of Rye, 326 F.Supp.2d 227, 232-33 (D. N.H. 2004) (“Defendants  
4 argue that this court lacks subject matter jurisdiction over plaintiff’s claims arising under 11  
5 U.S.C. § 362(h) for willful violation of the automatic stay because all such claims must be  
6 brought in the bankruptcy court. The weight of the authority supports the defendants’  
7 argument.”).

#### 8 LEAVE TO AMEND

9 For the reasons stated above, the undersigned has found that the complaint’s claim that  
10 provides the purported basis for the court’s subject matter jurisdiction over this action should be  
11 dismiss for lack of subject matter jurisdiction. The undersigned has carefully considered whether  
12 plaintiffs could amend the complaint to state a claim over which this court would have subject  
13 matter jurisdiction. “Valid reasons for denying leave to amend include undue delay, bad faith,  
14 prejudice, and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d  
15 1466, 1472 (9th Cir. 1988). See also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau,  
16 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the  
17 court does not have to allow futile amendments). In light of the apparent lack of subject matter  
18 jurisdiction over plaintiff’s claim and the nature of the allegations found in the complaint, the  
19 undersigned finds that granting leave to amend would be futile.

#### 20 SUPPLEMENTAL JURISDICTION

21 As noted above, in addition to the federal cause of action addressed above, plaintiffs’  
22 complaint asserts a number of state law causes of action. A district court may decline to exercise  
23 supplemental jurisdiction over state law claims if the district court has dismissed all claims over  
24 which it has original jurisdiction. 28 U.S.C. § 1367(c)(3). The court’s discretion to decline  
25 jurisdiction over state law claims is informed by the values of judicial economy, fairness,  
26 convenience, and comity. Acri v. Varian Associates, Inc., 114 F.3d 999, 1001 (9th Cir. 1997) (en  
27 banc). In addition, “[t]he Supreme Court has stated, and [the Ninth Circuit] ha[s] often repeated,  
28 that ‘in the usual case in which all federal-law claims are eliminated before trial, the balance of



1 factors . . . will point toward declining to exercise jurisdiction over the remaining state-law  
2 claims.” Acri, 114 F.3d at 1001 (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.  
3 7 (1988)). See also Satey v. JP Morgan Chase & Co., 521 F.3d 1087, 1091 (9th Cir. 2008)  
4 (recognizing this principle but noting that dismissal of the remaining state law claims is not  
5 mandatory).

6 Of course, “primary responsibility for developing and applying state law rests with the  
7 state courts.” Curiel v. Barclays Capital Real Estate Inc., Civ. No. S-09-3074 FCD KJM, 2010  
8 WL 729499, at \*1 (E.D. Cal. Mar. 2, 2010). Here, consideration of judicial economy, fairness,  
9 convenience, and comity all point toward declining to exercise supplemental jurisdiction.  
10 Therefore, the undersigned will also recommend that the assigned District Judge decline to  
11 exercise supplemental jurisdiction over the complaint’s state law claims.

#### 12 CONCLUSION

13 Accordingly, IT IS HEREBY RECOMMENDED that:

- 14 1. Defendant’s September 24, 2014 motion to dismiss (Dkt. No. 7), re-noticed for  
15 hearing before the undersigned on October 9, 2014, (Dkt. No. 10), be granted;
- 16 2. The complaint’s first cause of action be dismissed without prejudice for a lack  
17 of subject matter jurisdiction;
- 18 3. The court decline to exercise supplemental jurisdiction over the complaint’s  
19 state law claims; and
- 20 4. This action be closed.

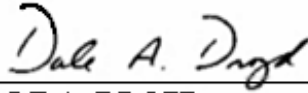
21 These findings and recommendations are submitted to the United States District Judge  
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
23 after being served with these findings and recommendations, any party may file written  
24 objections with the court and serve a copy on all parties. Such a document should be captioned  
25 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
26 shall be served and filed within seven days after service of the objections. The parties are advised

27 ////

28 ////

1 that failure to file objections within the specified time may waive the right to appeal the District  
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: April 16, 2015

4 

5 \_\_\_\_\_  
6 DALE A. DROZD  
7 UNITED STATES MAGISTRATE JUDGE

8 DAD:6  
9 Ddad1\orders.pro se\arden1777.mtd.f&rs.docx  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28