APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-2249

In re: KEVAN HARRY GILMAN,
Debtor,

TAMMY R. PHILLIPS; TAMMY R. PHILLIPS, APLC,
Plaintiffs-Appellants,

v.

AMY L. GOLDMAN,
Defendant-Appellee.

Argued and Submitted: January 13, 2026
Filed: May 7, 2026

Appeal from the United States District Court
for the Central District of California

Before MARY H. MURGUIA, Chief Judge, and RONALD M. GOULD, JOHNNIE B. RAWLINSON, JAY S. BYBEE, MORGAN B. CHRISTEN, JACQUELINE H. NGUYEN, JOHN B. OWENS, DANIEL A. BRESS, DANIELLE J. FORREST, ANTHONY D. JOHNSTONE, and ANA DE ALBA, Circuit Judges.

OPINION

NGUYEN, Circuit Judge:

Chapter 7 bankruptcy trustees enjoy certain immunities with respect to their role in administering a debtor's estate. Today we clarify the nature and limits of those immunities. The district court and bankruptcy court applied the wrong legal test when evaluating Trustee Amy Goldman's immunity from allegations that she failed to preserve and safeguard estate assets. Because the pleadings do not establish that Goldman is entitled to immunity, we reverse and remand.

I.

A.

This suit arises out of the long-standing efforts by Tammy R. Phillips and her eponymous law firm (collectively, "Phillips") to collect on their pre-petition judgments against debtor Kevan Harry Gilman. In February 2011, Gilman filed for bankruptcy protection under Chapter 7, and the U.S. Trustee appointed Goldman to oversee the case. *See* 11 U.S.C. § 701(a)(1).

Gilman disclosed an interest in two Los Angeles properties that he owned with his wife—their residence on Varna Avenue in Van Nuys,[1] in which Gilman claimed a homestead exemption, and a commercial property on Corbin Avenue in Northridge. In June 2011, the trustee reported that there was "no property available for distribution from the estate over and above that exempted by

[1] Gilman's wife moved out of the home in August 2012, and a divorce decree was entered in March 2021.

law" and requested to be discharged from her duties as trustee because the estate had been fully administered.[2] *See* 11 U.S.C. § 727; Fed. R. Bankr. P. 2002(e).

Phillips raised several objections to Gilman's claimed homestead exemption. After protracted litigation on the issue in the main bankruptcy case, including two appeals to this court, *see generally In re Gilman*, 887 F.3d 956 (9th Cir. 2018), we affirmed the bankruptcy court's decision overruling most of the objections, *In re Feinstein*, No. 20-56279, 2023 U.S. App. LEXIS 1136, 2023 WL 195513 (9th Cir. Jan. 17, 2023).

Meanwhile, in November 2020, Phillips moved the bankruptcy court to direct Goldman to administer the estate or, alternatively, remove her as trustee. Phillips argued that the properties were valued "well beyond" the amount of Gilman's secured debt and that Goldman "did not adequately explore" malpractice claims that Gilman may have had against his counsel. With the bankruptcy court's authorization, Goldman hired general bankruptcy counsel to assess the value of the secured claims that Phillips asserted and to defend herself against Phillips's charge of an improper investigation. Goldman then withdrew the no-asset report and notified the bankruptcy court that assets would be administered, and the court set a deadline for creditor claims.

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[2] At the time, there was a pending adversary proceeding in which Phillips sought to have Gilman's debts declared nondischargeable. In 2016, the bankruptcy court denied Gilman a discharge, finding that he had removed and concealed estate property "with the intent to hinder and delay creditors." *Phillips v. Gilman*, No. 1:11-ap-01389, 2016 WL 8115713, at *10 (Bankr. C.D. Cal. Nov. 3, 2016); *see* 11 U.S.C. § 727(a)(2).

Following Gilman's death in May 2021, Goldman filed notice of her intent to abandon the real properties, as well as Gilman's potential malpractice claim against his counsel, because she had determined that they had inconsequential value and would be burdensome to the bankruptcy estate. *See* 11 U.S.C. § 554(a). In her view, the properties had no realizable equity because the amount of secured debts, estimated costs of sale, potential adverse tax consequences, and estimated administrative fees exceeded the properties' anticipated values. She represented that Gilman, having released his legal malpractice claim in exchange for free representation in related matters, had no damages, and that the statute of limitations had run prior to the petition date. After a hearing, the bankruptcy court overruled Phillips's objections and entered orders abandoning the properties at issue. *See* Fed. R. Bankr. P. 6007(a)(2).

Goldman then filed a second no-asset report and again requested to be discharged from her duties as trustee. In response to Phillips's objections, Goldman withdrew the report and successfully demanded turnover of funds from Gilman's ex-wife. Gilman's bankruptcy case remains pending notwithstanding his death. *See* Fed. R. Bankr. P. 1016(a).

B.

In February 2022, Phillips commenced this adversary proceeding against Goldman. Phillips claims that Goldman was grossly negligent in managing the real properties, in breach of her fiduciary duties to the creditors, by allowing waste and failing to collect rent.[3]

Phillips alleges that Goldman knew Gilman was deferring maintenance on the properties, which physically deteriorated over the years due to his neglect, and that she failed to safeguard them. Goldman allegedly learned from case filings and letters sent to her by Phillips's counsel that Gilman and his wife were collecting rent from the properties and not paying real estate taxes or homeowners association dues. However, she allegedly made no attempt to obtain a turnover of the rent payments for use in maintaining the properties or paying unsecured creditor claims. Phillips asserts that the lack of maintenance caused the property values to appreciate more slowly than the market as a whole, losing a total of $200,000 to $300,000 in value during the 11 years they had then been in the bankruptcy estate.

Goldman moved to dismiss the complaint on several grounds, and the bankruptcy court granted the motion, with prejudice, on two: quasi-judicial immunity and the statute of limitations.[4] In the bankruptcy court's view,

[3] Phillips also asserts a claim against Goldman and her sureties to collect on the faithful performance bond. *See* 11 U.S.C. § 322 (requiring trustees to file a bond "conditioned on the faithful performance of [their] official duties"); Fed. R. Bankr. P. 2010(b) (authorizing proceeding on the bond by the injured party). Although neither the bankruptcy court nor the district court appears to have explicitly addressed this claim, it is derivative of Phillips's claims for breach of fiduciary duty.

[4] In addition, Goldman asserted that the business judgment rule precludes liability, the asserted damages are speculative, and Phillips's

Goldman has immunity if her discretionary decisions to act or refrain from acting amounted only to negligence—as opposed to gross negligence. The court concluded that Phillips alleges only ordinary negligence.

As for the time bar, the bankruptcy court found that Phillips had notice that Goldman was not actively managing the properties in 2011, when Goldman filed the first no-asset report. In addition, the court observed, Phillips allegedly notified Goldman in a 2016 letter about rent payments that had not been turned over to the estate, yet Phillips waited more than four years—the limitations period—to file suit. *See* Cal. Civ. Proc. Code § 343; *FDIC v. McSweeney*, 976 F.2d 532, 535–36 (9th Cir. 1992).

Phillips appealed the bankruptcy court's judgment to the district court, which affirmed in part, reversed in part, and remanded. The district court reversed the bankruptcy court's ruling that the claims were time-barred. Observing that nothing in the complaint establishes Phillips learned of the properties' disrepair prior to 2019, when she saw Gilman's reference to "deferred maintenance," the district court concluded that Phillips could claim damages from Goldman's failure to collect rents within four years of filing suit under a continuous accrual theory.[5]

The district court affirmed the bankruptcy court's ruling that Goldman is entitled to quasi-judicial immunity based on the current pleading. The district court agreed

failure to mitigate any damages bars recovery because a trustee has no obligation to "babysit" creditors' collateral.

[5] Goldman does not challenge the district court's application of this theory, and we therefore do not address it.

with the bankruptcy court that immunity extends to a trustee's acts of ordinary negligence if they are "closely related to the judicial process" and involve the exercise of judgment, *Burton v. Infinity Cap. Mgmt.*, 862 F.3d 740, 748 (9th Cir. 2017), but not to "actions that are deemed to be gross negligence or for acts of intentional wrongdoing," *In re Cont'l Coin Corp.*, 380 B.R. 1, 15 (Bankr. C.D. Cal. 2007). And while it also agreed with the bankruptcy court that Phillips failed to allege conduct exceeding ordinary negligence, the district court remanded the case for a determination of whether amendment would be futile.

Phillips appealed the district court's order. Following argument before a three-judge panel of this court, a majority of non-recused active judges voted to hear the case en banc. *See Phillips v. Goldman*, 158 F.4th 1082 (9th Cir. 2025).

II.

Before turning to the merits, we must first address whether we have jurisdiction to review the district court's order. *See Herklotz v. Parkinson*, 848 F.3d 894, 897 (9th Cir. 2017) (holding that we have an "independent obligation" to assess our jurisdiction). Unlike the district court's power of review in bankruptcy cases, which extends to interlocutory decisions, *see* 28 U.S.C. § 158(a)(3), our jurisdiction is normally limited to "final" decisions of the district court and bankruptcy appellate panel, *id.* § 158(d)(1).[6]

[6] We can review interlocutory decisions only upon certification by the district court or bankruptcy appellate panel, as the case may be, the

Although the rules of finality "are different in bankruptcy," *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501 (2015), they are not entirely different. Bankruptcy cases involve "an aggregation of individual controversies," *id.* (quoting 1 Collier on Bankruptcy ¶ 5.08[1][b] (16th ed. 2014)), and the finality analysis differs "only to the extent a 'final' order under § 158 may terminate a discrete proceeding in bankruptcy, rather than the entire bankruptcy case," *In re Gugliuzza*, 852 F.3d 884, 898 (9th Cir. 2017). A bankruptcy court's decision that "finally determines the discrete issue to which it is addressed" will be final for appeal purposes if it "seriously affects substantive rights," *id.* at 894 (quoting *In re Perl*, 811 F.3d 1120, 1126 (9th Cir. 2016)), or, put differently, if it alters "the legal relationships among the parties," *id.* (quoting *Bullard*, 575 U.S. at 506).

When the ruling involves a "contested matter"—the "undefined catchall for . . . issues the parties dispute" by motion in the main bankruptcy case—determining finality can be challenging. *Bullard*, 575 U.S. at 505; *see* Fed. R. Bankr. P. 9014(a). "[T]he list of contested matters is 'endless' and covers all sorts of minor disagreements." *Bullard*, 575 U.S. at 505 (quoting 10 Collier ¶ 9014.01).

For appeals taken from an adversary proceeding, however, finality is often easier to assess. Adversary proceedings are "essentially full civil lawsuits carried out under the umbrella of the bankruptcy case," *id.*, and "many . . . would exist as stand-alone lawsuits but for the bankrupt status of the debtor," *id.* at 501. As with other stand-

bankruptcy court, or the parties acting jointly. *See* 28 U.S.C. § 158(d)(2).

alone lawsuits, an order normally must "entirely terminat[e] an adversary proceeding" to be final. *Gugliuzza*, 852 F.3d at 894 (quoting *Four Seas Ctr., Ltd. v. Davres, Inc.*, 754 F.2d 1416, 1418 (9th Cir. 1985)).

A district court's order affirming or reversing a final decision by the bankruptcy court is itself final and immediately appealable under § 158(d)(1). *Id.* Things become murkier when, as here, the district court remands the case to the bankruptcy court for further proceedings. To determine whether such an order is final and appealable, we apply "a four-factor test, considering '(1) the need to avoid piecemeal litigation; (2) judicial efficiency; (3) the systemic interest in preserving the bankruptcy court's role as the finder of fact; and (4) whether delaying review would cause either party irreparable harm.'" *Id.* (quoting *Perl*, 811 F.3d at 1126).

Applying the four-factor test here, the district court's remand order does not appear final. The order "did not end the discrete proceeding before it," *id.* at 898, because Phillips potentially could prevail on an amended complaint. *Cf. Bullard*, 575 U.S. at 503 (holding that an order denying plan confirmation is not final merely because it "rule[s] out the specific arrangement of relief embodied in a particular plan," since other plans can be proposed and confirmed). Thus, "the district court's decision did not 'alter the status quo' or 'fix the rights and obligations of the parties.'" *Gugliuzza*, 852 F.3d at 898 (brackets omitted) (quoting *Bullard*, 575 U.S. at 502). Because leave to amend a pleading deficiency should be freely granted, *see* Fed. R. Civ. P. 15(a)(2); Fed. R. Bankr. P. 7015, "the risk of piecemeal litigation is significant," *Gugliuzza*, 852 F.3d at 899 (quoting *In re Landmark Fence Co.*, 801 F.3d 1099, 1103 (9th Cir. 2015)). Entertaining an appeal when the pleadings are unsettled risks "multiple 'climbs up the appellate ladder and slides down the chute' and the 'delays and inefficiencies' that result." *Id.* at 894 (brackets omitted) (quoting *Bullard*, 575 U.S. at 504).

Granted, "the issues on appeal in this case are purely legal in nature, and our disposition of these issues could aid the bankruptcy court" by clarifying a trustee's entitlement to immunity, but this rationale for exercising jurisdiction "is inconsistent with *Bullard.*" *Id.* at 898, 899. We do not "evaluate whether the appeal of a specific ruling would be efficient in a particular case," which would require us to improperly "peek at the merits in order to determine whether we have jurisdiction." *Id.* at 897. Finally, at this stage, "the bankruptcy court's fact-finding role is best preserved by allowing the remand to run its course," *id.* at 899, because the bankruptcy court could allow the case to proceed on an amended complaint. And "it is doubtful that an interlocutory district court order can cause irreparable harm in light of the 'parties' rights and obligations remaining unsettled,' and the availability of mechanisms for interlocutory review." *Id.* (brackets and citation omitted) (quoting *Bullard*, 575 U.S. at 503). In sum, the four-factor test weighs in favor of treating the district court's remand order as interlocutory.

At argument, however, Phillips's counsel represented that Phillips is standing on the complaint rather than seeking leave to amend in the bankruptcy court. As a general matter, "the plaintiff has the right to stand on the pleading" if she believes that it satisfies Rule 8(a). *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th Cir. 2004). While this may require the trial court to issue a judgment dismissing the complaint with prejudice, *see WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir.

1997) (en banc), the bankruptcy court has already done so here.

When "all that remains to do on remand is a purely mechanical . . . task" that will not "affect the issue that the disappointed party wants to raise on appeal," we deem the district court's decision to be final for purposes of appellate jurisdiction. *In re Saxman*, 325 F.3d 1168, 1172 (9th Cir. 2003) (quoting *In re Fox*, 762 F.2d 54, 55 (7th Cir. 1985)). In light of counsel's representation that Phillips will not amend the complaint, there is nothing left to be done but for the bankruptcy court to enter another judgment dismissing the complaint with prejudice and the district court to affirm. Under these circumstances, we conclude that the district court's order is effectively final, and we therefore have jurisdiction under § 158(d)(1).

III.

A.

A party aggrieved by a bankruptcy trustee's actions can seek redress against the trustee in her official or personal capacity. In official capacity suits, where the trustee is sued as the representative of the bankruptcy estate, *see* 11 U.S.C. § 323, any award will be paid from the estate. *See Barton v. Barbour*, 104 U.S. 126, 128 (1881); *In re Crown Vantage, Inc.*, 421 F.3d 963, 970–71 (9th Cir. 2005). In personal capacity suits, absent a basis for immunity, the trustee is personally liable for her intentional and negligent torts. *See Mosser v. Darrow*, 341 U.S. 267, 274 (1951); *In re Cochise Coll. Park, Inc.*, 703 F.2d 1339, 1356–57 (9th Cir. 1983).

Subjecting the trustee to the risk of personal liability promotes honesty and efficiency in the administration of a bankruptcy estate. *See Mosser*, 341 U.S. at 274 ("The most effective sanction for good administration is personal liability for the consequences of forbidden acts . . . ."). At the same time, to ensure that would-be trustees are not discouraged from serving in this publicly beneficial role, courts provide "ways by which a trustee may effectively protect [her]self against personal liability." *Id.*

Under our case law, bankruptcy trustees may be entitled to immunity if they are acting *like* judges or *for* judges. The first doctrine, known as "quasi-judicial immunity," provides trustees absolute immunity from liability for "functions involving the exercise of discretionary judgment" that are "essential to the authoritative adjudication of private rights to the bankruptcy estate." *In re Castillo*, 297 F.3d 940, 949, 951 (9th Cir. 2002). The second doctrine, which is referred to as "derived judicial immunity" or simply "derived immunity," provides protection in discrete circumstances. A trustee will not be held liable when (1) her acts were within the scope of her authority; (2) the debtor, creditors, and other interested parties had notice of the proposed acts; (3) the trustee candidly disclosed the proposed acts to the bankruptcy court; and (4) the bankruptcy court approved the acts. *In re Harris*, 590 F.3d 730, 742 (9th Cir. 2009).

Although the two doctrines overlap, including in the terminology we have used to describe them,[7] each offers unique protections. Quasi-judicial immunity shields a trustee who acts without court authorization when per-

[7] Because the terminological overlap may have contributed to doctrinal confusion, we will refer only to "derived immunity" rather than "derived judicial immunity."

forming judge-like actions, and derived immunity protects a trustee who performs court-sanctioned acts even when the acts are non-adjudicative in nature. We discuss each of these doctrines in turn.

1.

We start with quasi-judicial immunity. In a series of decisions in the 1980s, we recognized that a bankruptcy trustee may be entitled to quasi-judicial immunity "for her discretionary acts," *Bennett v. Williams*, 892 F.2d 822, 825 (9th Cir. 1989), even if not expressly authorized by the bankruptcy court, so long as she "is performing an integral part of the judicial process," *Lonneker Farms, Inc. v. Klobucher*, 804 F.2d 1096, 1097 (9th Cir. 1986). Then, in *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429 (1993), "the Supreme Court worked a sea change in the way in which we are to examine absolute quasi-judicial immunity for nonjudicial officers." *Castillo*, 297 F.3d at 948. The Court rejected our approach to immunity in which nonjudicial officers receive immunity merely "because they are 'part of the judicial function.'" *Antoine*, 508 U.S. at 435 (quoting *Antoine v. Byers & Anderson, Inc.*, 950 F.2d 1471, 1476 (9th Cir. 1991)).

Judges themselves, the Court explained, receive absolute judicial immunity only because "the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability." *Id.* The applicability of judicial immunity thus depends on whether there "has been 'performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.'" *Id.* at 435–36 (quoting *Burns v. Reed*, 500 U.S. 478, 500 (1991) (Scalia, J., concurring in the judgment in part and dissenting in part)).

"When judicial immunity is extended to officials other than judges, it is because their judgments are 'functionally comparable' to those of judges—that is, because they, too, 'exercise a discretionary judgment' as a part of their function." *Id.* at 436 (brackets omitted) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 423 n.20 (1976)). "In determining which officials perform functions that might justify a full exemption from liability," we undertake "a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." *Id.* at 432 (quoting *Butz v. Economou*, 438 U.S. 478, 508 (1978)).

In *Castillo*, we reconsidered the application of quasi-judicial immunity to bankruptcy trustees in light of *Antoine.* First, we considered the historical roles of bankruptcy officers and observed that "the common-law and nineteenth century antecedents of the modern bankruptcy trustee were entrusted with both administrative and adjudicatory functions." *Castillo*, 297 F.3d at 950. The administrative functions included "collecting, liquidating, and distributing the debtor's property to creditors," while the adjudicatory functions included "seizing property, summoning persons to appear before them, and committing people to prison." *Id.* at 949. We concluded that "immunity would have extended to the performance of these common-law adjudicatory functions." *Id.* at 950.

We then considered a trustee's role under the current Bankruptcy Code. At a high level, the trustee gathers and liquidates estate property (for which she is accountable), ensures that the debtor performs his obligations, investigates the debtor's finances, and reviews the proofs of claim. *Id.* If appropriate, the trustee opposes the debtor's discharge, provides relevant information to parties-in-interest, and, by court order, operates the business on a short-term basis. *Id.* The trustee also prepares the final report and an accounting for the estate's administration. *Id.* at 950–51. *See generally* 11 U.S.C. § 704 (setting forth the trustee's duties). We thus characterized the modern bankruptcy trustee as "a hybrid official" who, "like the common-law bankruptcy judicial officers," has "many legal, adjudicative, clerical, financial, administrative, and business functions" that can loosely be categorized as either "adjudicatory" or "administrative." *Castillo*, 297 F.3d at 951.

To determine whether a bankruptcy trustee is entitled to quasi-judicial immunity, "we must examine the particular function . . . at issue." *Id.* When performing this inquiry, courts should bear in mind that the Supreme Court has "been 'quite sparing' in [its] recognition of absolute immunity and [has] refused to extend it any 'further than its justification would warrant.'" *Burns*, 500 U.S. at 487 (citation omitted) (first quoting *Forrester v. White*, 484 U.S. 219, 224 (1988); and then quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 811 (1982)). Crucially, quasi-judicial immunity attaches only to functions that are analogous to "the authoritative adjudication of private rights to the bankruptcy estate." *Castillo*, 297 F.3d at 951.

In *Castillo*, the actions at issue were "the scheduling and giving of notice of hearings," both of which, we held, "are part of the judicial function of managing the bankruptcy court's docket in the resolution of disputes" as they could not be disentangled from it. *Id.* Because "[t]his function is unquestionably discretionary in nature"—notwithstanding that the component acts might "appear ministerial" if "taken out of context"—the trustee was entitled to quasi-judicial immunity. *Id.* at 951–53.

In *Burton*, we held that the function at issue was *not* adjudicative in nature. The debtor and his counsel sued a creditor's attorney for violating the automatic stay. *Burton*, 862 F.3d at 745–46. The debtor had deposited funds from a personal injury settlement with the bankruptcy trustee, and the creditor's attorney pressured the debtor to interplead the funds in a parallel state court proceeding because it "would resolve the interests of the lien holders more quickly than the bankruptcy court." *Id.* at 743. We held that the creditor's attorney, despite working with the state judge to have the funds interpled, was not entitled to quasi-judicial immunity. *Id.* at 749. We reasoned that historically, absolute immunity for attorneys has been limited to "action[s] that only a legal representative of the government could take," such as attorneys serving as prosecutors and, in certain contexts, bankruptcy trustees. *Id.* at 748 (quoting *Stapley v. Pestalozzi*, 733 F.3d 804, 812 (9th Cir. 2013)). More relevant here, the functions that the creditor's attorney had performed—"private advocacy or attempted debt collection"—were "distinct from the judicial function." *Id.* at 749.

2.

Derived immunity arises out of the well-established practice "by which trustees seek instructions from the court, given upon notice to creditors and interested parties, as to matters which involve difficult questions of judgment." *Mosser*, 341 U.S. at 274. We first recognized the doctrine in *Lonneker Farms.* Citing to a Fifth Circuit case in which a bankruptcy trustee was "entitled to derived immunity" because he "sought and obtained court approval of his actions," *Boullion v. McClanahan*, 639 F.2d 213, 214 (5th Cir. Unit A Mar. 1981) (per curiam), we held that derived immunity protects a trustee who "act[s] under the authority of the bankruptcy judge," *Lonneker Farms*, 804 F.2d at 1097. To hold otherwise would "damage . . . the orderly administration of justice in the federal court system" by allowing an improper collateral appeal of the bankruptcy court's order. *Mullis v. U.S. Bankr. Ct.*, 828 F.2d 1385, 1392 (9th Cir. 1987).

In *Bennett*, we expanded on the doctrine. We explained that a bankruptcy trustee "has a duty to preserve the assets of an estate and must 'exercise that measure of care and diligence that an ordinarily prudent person would exercise under similar circumstances.'" *Bennett*, 892 F.2d at 823 (quoting *In re Rigden*, 795 F.2d 727, 730 (9th Cir. 1986)). While a trustee may be liable for even negligent violations of this duty, we identified "certain standards" that, if met, will immunize her. *Id.*

As catalogued above, a trustee claiming derived immunity must meet four requirements: (1) her acts must have been within the scope of her authority; (2) the interested parties must have had notice of the proposed acts; (3) she must have candidly disclosed the proposed acts to the bankruptcy court; and (4) the bankruptcy court must have approved the acts. *See Harris*, 590 F.3d at 742.

First, "[t]he act must be within the trustee's official duties." *Bennett*, 892 F.2d at 823. "The powers and duties of a bankruptcy trustee are extensive" under the Bankruptcy Code and include "wide-ranging management authority over the debtor." *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). Given this significant grant of authority, a trustee must take care not to exceed it. For example, in *Leonard v. Vrooman*, 383 F.2d 556 (9th Cir. 1967), an overly zealous trustee broke into and seized real property belonging to a third party, mistakenly believing it belonged to the debtor, and refused to relinquish the property after discovering that the third party had acquired and recorded title prior to the bankruptcy. *See id.* at 560. We acknowledged that the Bankruptcy Code obliged the trustee to gather the debtor's property and that the trustee's "failure to act diligently in this respect could result in a claim against him." *Id.* However, we explained that the trustee must discharge the duty in an authorized way, and the proper procedure would have been to obtain a turnover order. *See id.* at 560–61.

Even if the trustee acts within the scope of her authority, she must "give notice . . . of a proposed action" to the debtor, creditors, and other interested parties. *Bennett*, 892 F.2d at 823. Notice protects these parties' due process rights by providing them an opportunity to object and have the bankruptcy court consider their concerns before granting any relief to the trustee. *See Mosser*, 341 U.S. at 274 (explaining that notice to interested creditors permits them "to show cause why [the proposed action] should not [be] openly authorized"). In *Cochise College Park*, we held that the bankruptcy trustee was "personally responsible" for unreasonably using creditors' funds that "never became property of the estate" to pay for estate administration. 703 F.2d at 1356–57. Although the bankruptcy court had authorized the payments in a series of ex parte orders, the orders were "insufficient to relieve the trustee of personal liability" because "no notice of these transactions was given to the [creditors], despite their obvious status as 'interested parties.'" *Id.* at 1357 n.25.

Notice to interested parties is still not enough. "The trustee's disclosure to the court must be candid." *Bennett*, 892 F.2d at 823. To satisfy the candor requirement, the trustee's representation must be both truthful and complete, apprising the bankruptcy court of all material facts that would bear on the court's decision, including facts that weigh against the proposed action. For example, in *Mosser*, the trustee hired two employees to assist with the debtors' reorganization. 341 U.S. at 268–69. Although the trustee discussed hiring these "indispensable" employees with the district court, he "did not disclose the critical fact that he was employing them on terms which permitted their trading in the . . . securities" of the debtors' subsidiaries. *Id.* at 274. Because this undisclosed information was material, the trustee was personally liable for any losses from the conflicts of interest. *See id.* ("It is hardly probable that a candid disclosure to creditors, to the court, and to interested parties would have resulted in instructions to have pursued this course; but, had it been authorized, at least the assenting creditors might have found themselves estopped to question the transaction.").

Lastly, for derived immunity to attach, the trustee must "obtain court approval." *Bennett*, 892 F.2d at 823. Derived immunity, as the name suggests, reflects the idea that the trustee "share[s] the judge's absolute immunity" to avoid "the unfairness of sparing the judge who gives an order while punishing the [trustee] who obeys it." *Kermit Constr. Corp. v. Banco Credito Y Ahorro Ponceno*, 547 F.2d 1, 3 (1st Cir. 1976). Without the court's approval, there is no such unfairness in allowing the trustee to face liability for her actions.

3.

In concluding that "immunity covers claims pertaining to 'ordinary negligence'" but not "claims involving gross negligence or willful misconduct," the district court ultimately relied on *Continental Coin*, a bankruptcy court decision that attempted to reconcile our case law on bankruptcy trustee immunity, which has not always been a model of clarity. *See Cont'l Coin*, 380 B.R. at 11–15. However, *Continental Coin* conflated the two strands of immunity, *see id.* at 6 & n.8 (treating quasi-judicial immunity and derived immunity "interchangeably"), and applied an immunity standard that incorrectly turned on the trustee's degree of fault, *see id.* at 11.

In *Castillo*, we described the trustee's quasi-judicial immunity as "absolute." *See* 297 F.3d at 947 ("Absolute judicial immunity is not reserved solely for judges, but extends to nonjudicial officers for 'all claims relating to the exercise of judicial functions.'" (quoting *Burns*, 500 U.S. at 499 (Scalia, J., concurring in the judgment in part and dissenting in part))). That means that a trustee's quasi-judicial immunity insulates her "from charges of erroneous acts or irregular action, even when it is alleged that such action was driven by malicious or corrupt motives." *Id.* A trustee's derived immunity is similarly "broad." *Bennett*, 892 F.2d at 823. So long as a trustee acts "within the scope of [her] authority and pursuant to court order" after candid disclosure and notice, *id.*, her subjective intent is irrelevant, as is that of the bankruptcy judge who approved the action, *see Boullion*, 639 F.2d at 214 ("[Judicial] immunity is not lost even though 'the action (the judge) took was in error, [or] was done maliciously . . . .'" (quoting *Stump v. Sparkman*, 435 U.S. 349, 356 (1978))).

Continental Coin expressed the concern, echoed here by amicus curiae, that exposing trustees to liability for negligence could discourage suitable persons from serving as bankruptcy trustees. *See* 380 B.R. at 7 ("[N]o trustee in his right mind would regularly subject himself to personal liability for negligence or even to having to defend a lawsuit for such alleged behavior."). There are two responses. As a legal matter, the Supreme Court has suggested that negligent conduct is enough to impose liability on a trustee, *see Mosser*, 341 U.S. at 272, and we have squarely so held, *see Cochise Coll. Park*, 703 F.2d at 1357 n.26 (rejecting as a "misreading of . . . *Mosser*" the view that "a bankruptcy or reorganization trustee may be held personally liable for damages only for injuries arising from intentional—as opposed to negligent—conduct"). Under principles of stare decisis, there is no reason to upset this longstanding principle.

As a practical matter, we doubt that subjecting trustees to liability for negligence will dissuade potential trustees from serving in that role. As we have explained, a trustee enjoys immunity for negligent and even intentional conduct in some instances. The broad scope of immunity, where it applies, ensures that trustees do not become "a lightning rod for harassing litigation aimed at judicial orders." *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1303 (9th Cir. 1989) (quoting *Kermit Constr.*, 547 F.2d at 3).

Even when a trustee does not have immunity for a particular action or inaction, she can invoke the "business judgment rule" as a defense to liability. *See Mosser*, 341 U.S. at 274 ("Courts are quite likely to protect trustees against heavy liabilities for disinterested mistakes in business judgment."); *Bennett*, 892 F.2d at 824 ("We have consistently held that liability will not be imposed for mistakes in business judgment."). Because a bankruptcy trustee "may not be expected to conduct a business according to the standards of the debtor," we accord deference to the trustee's business management decisions. *Bennett*, 892 F.2d at 824. If a trustee has "sound reasons" for a business decision, "[l]iability will not be imposed for the exercise of such judgment, absent negligence." *Sw. Media, Inc. v. Rau*, 708 F.2d 419, 425 (9th Cir. 1983).

A trustee can further limit her liability by filing regular reports of the estate's management, thereby placing on creditors "the burden of raising their objections." *Mosser*, 341 U.S. at 274–75; *see In re Cloobeck*, 788 F.3d 1243, 1247 (9th Cir. 2015) (Wallace, J., concurring) ("A party must object within a reasonable time or risk being deemed to have consented to the action to which it objects."); *cf. In re Gregory*, 705 F.2d 1118, 1123 (9th Cir. 1983) ("When the holder of a large, unsecured claim . . . receives any notice from the bankruptcy court that its debtor has initiated bankruptcy proceedings, it is under constructive or inquiry notice that its claim may be affected, and it ignores the proceedings to which the notice refers at its peril."). Thus, if a trustee "account[s] at prompt intervals," *Mosser*, 341 U.S. at 274, and a creditor fails to timely object to the trustee's actions, then the creditor may be estopped from mounting a collateral attack.

And when a creditor brings factually or legally baseless claims against the trustee for her administration of the estate, the trustee can always seek sanctions, including "all or part of the reasonable attorney's fees and other expenses." Fed. R. Bankr. P. 9011(c)(4)(A)(iii); *see Law v. Siegel*, 571 U.S. 415, 427 (2014) ("[Rule 9011] authorizes the court to impose sanctions for bad-faith litigation conduct . . . ."). The prospect of sanctions should dissuade all but the most foolhardy of creditors from engaging in abusive litigation with the trustee over the estate's management.

B.

Although Phillips's complaint contains some gratuitous allegations regarding Goldman's perceived failings, we understand her claims to be relatively modest in scope. She alleges that Goldman breached her duty to preserve estate assets by allowing the two real properties to deteriorate from Gilman's neglect. And she alleges that Goldman failed to safeguard estate property by not demanding that the tenants pay rent or that Gilman turn over the rental income he had already collected.

The complaint's allegations relate to a bankruptcy trustee's functions of gathering estate property, investigating the debtor's finances, and operating the debtor's business on a short-term basis. These functions are not analogous to or intertwined with "the authoritative adjudication of private rights to the bankruptcy estate." *Castillo*, 297 F.3d at 951. Although they affect the estate's assets and, indirectly, the total amount available for distribution to creditors, they do not determine how the assets will be divided among the creditors. Rather, these functions call upon the trustee to act as a property manager.

Therefore, we hold that Goldman is not entitled to quasi-judicial immunity from Phillips's claims. Both *Castillo* and *Burton* support this result. In *Castillo*, we described "activities such as collecting, liquidating, and distributing the debtor's property to creditors" as "administrative" in nature and distinguished them from "more traditional judicial activities." 297 F.3d at 949–50. In *Burton*, we similarly held that "attempted debt collection" is not adjudicative. 862 F.3d at 749. And our holding is consistent with pre-*Antoine* case law establishing that a trustee can be personally liable for inaction in the face of his duty to preserve estate assets. *See Rigden*, 795 F.2d at 730, 733.

We also conclude that, on the current record, Goldman is not entitled to derived immunity. Phillips alleges that Goldman made "no attempt . . . to obtain any orders to preserve the bankruptcy estate or recover moneys taken from it," and we discern no orders in the bankruptcy docket authorizing Goldman's inaction in that regard. On remand, Goldman is free to raise derived immunity as a defense if she believes she can make the necessary showing.

We reverse the district court's decision upholding immunity and remand for the bankruptcy court to consider Goldman's remaining arguments for dismissal. We decline Phillips's request to remand the case to a different bankruptcy judge, as we conclude that the facts do not justify such a measure. *See Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky. v. Labrador*, 122 F.4th 825, 844 (9th Cir. 2024) (limiting reassignment to the "rare and extraordinary circumstances" where the judge "has exhibited personal bias" or it is otherwise necessary "to maintain the appearance of justice" (quoting *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1045 (9th Cir. 2015))).

REVERSED and REMANDED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

CASE NO. CV 22-4450-MWF

IN RE: KEVAN HARRY GILMAN

Filed: January 25, 2024

ORDER RE: APPEAL FROM DECISION OF THE UNITED STATES BANKRUPTCY COURT

Before MICHAEL W. FITZGERALD, United States District Judge.

Before the Court is an appeal from the United States Bankruptcy Court (the Honorable Victoria S. Kaufman, United States Bankruptcy Judge). Appellants Tammy Phillips and Tammy R. Phillips, a Prof. Law Corp. appeal the Bankruptcy Court's Order Granting Defendant's Motion to Dismiss Complaint ("Dismissal Order").

Appellants submitted their Opening Brief ("OB") on November 7, 2022. (Docket No. 15). On January 30, 2023, Appellee Amy L. Goldman, Chapter 7 Trustee, submitted her Response Brief ("RB"). (Docket No. 28). On February 4, 2023, Appellants submitted their Reply Brief ("Reply"). (Docket No. 29). The Court has read and considered the papers filed in this appeal and held a hearing on October 31, 2023.

For the reasons discussed below, the Dismissal Order is **AFFIRMED *in part*, REVERSED *in part*, and REMANDED**. Although Appellants' claim for relief for breach of fiduciary duty is not time-barred, Appellee is entitled to quasi-judicial immunity. The case is remanded to determine whether amending the Complaint would be futile.

I. BACKGROUND

Appellants obtained attorney fee awards against Kevin Harry Gilman as the result of meritless claims brought by Mr. Gilman in 2003–04 and subsequent costs related to appeals and Mr. Gilman's resistance to judgment enforcement. (OB at 4–5).

On February 7, 2011, Mr. Gilman ("Debtor") filed a voluntary petition under Chapter 7 of the Bankruptcy Code commencing the underlying bankruptcy case. Thereafter, Appellee was appointed as Chapter 7 trustee of the bankruptcy estate. On June 21, 2011, Appellee filed the Chapter 7 Trustee's Report of No Distribution ("Initial RND"), which provided as follows:

> I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 4 months. Assets Abandoned (without deducting any

> secured claims): $ 598000.00, Assets Exempt: $ 139950.00, Claims Scheduled: $ 654359.48, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): $ 654359.48.

(AA at 51). However, as a result of continued litigation between Debtor and Appellants, including multiple appeals, the Bankruptcy Case was never closed. In particular, Appellants objected to Debtor's claimed exemptions, including a homestead exemption on the Debtor's home on Varna Avenue in Valley Glen (the "Varna Residence"). Litigation related to this particular issue was ongoing at the time the Dismissal Order was entered. (RB at 7).

On November 26, 2020, Appellants filed a motion to direct Appellee to administer the estate trust, or in the alternative, to remove Appellee as Trustee. However, Appellants abandoned this motion and it did not go forward.

On January 25, 2021, Appellee withdrew the Initial RND.

On May 13, 2021, after receipt of notice that Debtor had died, Appellee filed a notice of intent to abandon the Varna Residence and Debtor's office on Corbin Avenue (the "Corbin Office") (together, the "Real Properties"). As stated in the abandonment notice, after taking into account their current market values and the mortgages, prepetition judgment liens, tax liens and other liens against each property, there was no realizable equity in either property; "the amount of secured debts, estimated costs of sale, potential tax consequences and estimated administrative fees exceed the anticipated value of the properties." (RB at 8).

On July 27, 2021, after full briefing and a hearing, the Bankruptcy Court entered an order authorizing Appellee to abandon the Real Properties, finding the Real Properties were burdensome to the estate and of inconsequential value and benefit. Appellants did not appeal this order.

On August 5, 2021, Appellee filed her second Chapter 7 Trustee's Report of No Distribution ("Second RND"). On September 3, 2021, Appellants filed an objection and declaration in support of the objection.

On February 17, 2022, Appellants filed a complaint (the "Complaint") against Appellee related to Appellants' alleged real property judgment liens attached to the Real Properties. Appellants alleged that Appellee breached her fiduciary duty by (1) allowing deterioration of the Real Properties; and (2) failing to collect rents she was obligated to collect. The first claim for relief alleged that the Varna Property in particular would have increased in value to a greater extent if Appellee had not breached her duty to protect it from deterioration. The second claim for relief asserted that Appellee failed to demand that Debtor turnover the rents collected on both properties, including rents collected on the Corbin Office beginning in July 2020. (OB at 13–14).

Among other things, the Complaint includes an allegation that in a letter dated January 12, 2016, Appellants informed Appellee that Appellants had learned that Debtor's wife had taken rent by leasing the Corbin Office, and informed her of other alleged issues, yet Appellee did nothing to collect the rents. (AE at 80, Complaint ¶ 23).

On April 20, 2022, Appellee moved to dismiss the Complaint, arguing, among other things, that Appellants' claims were time-barred because they began to accrue when Appellants were put on notice of Appellee's intention not to administer estate assets by the Initial RND and again following Appellee's inaction in response to Appellants' 2016 letter informing Appellee that Debtor's wife had taken rent by leasing the Corbin Office.

On June 1, 2022, the Bankruptcy Court issued a tentative ruling on the Motion to Dismiss and held a hearing.

On June 9, 2022, the Bankruptcy Court entered the Dismissal Order, granting the motion to dismiss and dismissing the Complaint with prejudice. (AE at 202–03). The Dismissal Order stated that "this Court's findings of fact and conclusions of law set forth on the record . . . including that Plaintiffs' causes of actions for breach of fiduciary duty are time-barred pursuant to Cal. Code of Civil Procedure § 343." (*Id.*).

The tentative opinion, which was discussed at the hearing and incorporated into the record, provided the Bankruptcy Court's reasoning:

> Pursuant to California Code of Civil Procedure § 343, plaintiffs' cause of action for breach of fiduciary duty is time-barred.
>
> In addition, the chapter 7 trustee has quasi-judicial immunity for any negligence with respect to her identified discretionary acts (and decisions to refrain from taking action), and the plaintiffs have not adequately plead in their complaint that the chapter 7 trustee committed acts of gross negligence.
>
> On February 17, 2022, the plaintiffs filed the Complaint for Breach of Fiduciary Duty ("Complaint")

> against the chapter 7 trustee. As set forth in the Complaint, more than four years before filing the Complaint, the plaintiffs had notice of the chapter 7 trustee's report of no distribution. That report: (1) stated that the chapter 7 trustee had "made a diligent inquiry into the financial affairs of the debtor(s) and the location of property belonging to the estate" and that "there is no property available for distribution from the estate over and above that exempted at law;" (2) certified, pursuant to Fed. R. Bankr. P. 5009, that the estate had been fully administered; and (3) requested that the chapter 7 trustee be discharged from any further duties as trustee.
>
> As also stated in the Complaint, on January 12, 2016, the plaintiffs sent the chapter 7 trustee a letter "reminding" her that the debtor's claim to an enhanced homestead exemption, based on disability, was rejected, that the debtor "had stolen funds from the bankruptcy estate" and that the debtor and his wife were renting real property of the estate.
>
> Although the chapter 7 trustee took no action in response to that letter from the plaintiffs, or the notice provided by the Court in November 2016 that the debtor was denied a discharge, the plaintiffs did not file the Complaint until more than four years after sending their January 12, 2016 letter to the chapter 7 trustee.

(AE at 200–01).

II. STANDARD OF REVIEW

A bankruptcy court's conclusions of law are reviewed de novo, and findings of fact are reviewed for clear error. *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc.*, 503 F.3d 933, 940 (9th Cir. 2007). This Court reviews de novo the Bankruptcy Court's order dismissing a complaint under Rule 12(b)(6). *Towers v. Boyd (In re Boyd)*, 243 B.R. 756, 759 (N.D. Cal. 2000) (*citing Borough v. Rogstad*, 126 F.3d 1224, 1228 (9th Cir. 1997)). The denial of leave to amend is reviewed for abuse of discretion. *AE v. County of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012) (*citing Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010)); *see also Rund v. Bank of Am. Corp.* (*In re EPD Inv. Co., LLC*), 523 B.R. 680, 684 (9th Cir. BAP 2015) (*citing Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007)). A bankruptcy court abuses its discretion if it applies the wrong legal standard or if its factual findings are illogical, implausible, or without support from evidence in the record. *Id.* (*citing TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011)). However, where there is a denial of leave to amend because of futility of amendment, such a denial will be upheld if it is clear, upon de novo review, that the complaint would not be saved by any amendment. *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 893 (9th Cir. 2010) (*citing Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008)).

III. LEGAL STANDARD

Under Rule 12(b)(6), a bankruptcy court may dismiss a complaint if it fails to state a claim upon which relief can be granted.

To survive a Rule 12(b)(6) motion to dismiss, the complaint must contain sufficient facts which, if accepted as true, will state a claim to relief that is plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937 (2009) (*citing Twombly*, 550 U.S. at 570).

"Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory." *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). "To survive a motion to dismiss, a complaint must contain sufficient factual matter . . . to 'state a claim for relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The bankruptcy court must disregard allegations that are legal conclusions, even when disguised as facts. *See id.* at 681 ("It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth."); *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014). "Although 'a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof is improbable,' plaintiffs must include sufficient 'factual enhancement' to cross 'the line between possibility and plausibility.'" *Eclectic Props.*, 751 F.3d at 995 (quoting *Twombly*, 550 U.S. at 556–57) (internal citations omitted).

The bankruptcy court must then determine whether, based on the allegations that remain and all reasonable inferences that may be drawn therefrom, the complaint alleges a plausible claim for relief. *See Iqbal*, 556 U.S. at 679; *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 (9th Cir. 2011). "Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679).

IV. <u>DISCUSSION</u>

A. <u>Statute of Limitations</u>

The statute of limitations is an affirmative defense, Fed. R. Civ. P. 8(c), and complaints do not ordinarily need to allege the non-availability of affirmative defenses. *United States v. Northern Trust Co.*, 372 F.3d 886, 888 (7th Cir. 2004). "A claim may be dismissed under Rule 12(b)(6) on the ground that it is barred by the applicable statute of limitations only when 'the running of the statute is apparent on the face of the complaint." *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (*quoting Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir.2006)). The general rule is that a statute of limitation begins to run when a claim accrues; accrual does not occur until all elements of the claim—wrongdoing, harm, and causation—have come into existence. *Aryeh v. Canon Business Solutions, Inc.*, 55 Cal. 4th 1185, 1191, 151 Cal. Rptr. 3d 827, 292 P.3d 871 (2013).

The general rule is subject to a "discovery rule" which "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." *Id.* at 1192, 151 Cal. Rptr. 3d 827, 292 P.3d 871. California also recognizes a "continuous accrual" exception where "a series of wrongs or injuries may be viewed as each triggering its own limitations period, such that a suit for relief may be partially time-barred as to older events but timely as to those within the applicable limitations period." *Id.* California imposes a four-year statute of limitations for breach of fiduciary duty. Cal. Code Civ. Proc. § 343.

Appellants argue the bankruptcy court erred in applying the statute of limitations to both of their breach of fiduciary duty claims. (OB at 38). With respect to the second claim, Appellants argue that the bankruptcy court erred because Appellee was under a continuing duty to collect rental payments made for use of estate property. Appellants contend the claim could therefore reach back to Appellee's failure to seek recovery of any rents paid to the Debtor on or after February 17, 2018 (four years before the Complaint was filed) based on the continuous accrual doctrine. (*Id.* at 39). With respect to the first claim for relief, Appellants argue there is nothing in the Complaint to suggest Appellants perceived their injury due to deterioration of the Varna Residence until at least the spring of 2019 when Appellants saw Debtor's reference to "deferred maintenance" and thus their claim is not time barred based on the discovery rule. (*Id.*).

Appellee argues the Bankruptcy Court was correct to apply the statute of limitations because Appellants' claims accrued on the date they were put on notice that she did neither intended to administer the Real Properties nor take action as to their management – namely, on June 21, 2011, via the Initial RND. (RB at 18). Appellee also argues that Appellants waived their continuous accrual argument by failing to raise it with the Bankruptcy Court. (RB at 22). Alternatively, Appellee argues the Bankruptcy Court was also correct in finding that Appellants knew no later than 2016 that she neither intended to administer the Real Properties nor the rents in light of Appellants' letter to her sent on January 12, 2016, reminding Appellee that Debtor and his wife were renting real property of the estate. (*Id.* at 18–19).

1. Waiver of continuous accrual argument

Appellants raise the issue of continuous accrual on appeal to this Court. (OB at 37; RB at 22). Appellee contends that because Appellants did not raise this issue in the Bankruptcy Court, Appellants have waived this argument and should be prevented from presenting this novel issue to this Court. (RB at 22). Appellee is correct that "[g]enerally, a party must present his contention to the district [here, bankruptcy] court to preserve it for appeal." *Vincent v. Trend Western Tech. Corp.*, 828 F.2d 563, 570 (9th Cir. 1987). However, this is not an absolute rule and is ultimately a question left to the discretion of the appellate court. *See Los Angeles News Serv. v. Reuters Television Int'l*, 149 F.3d 987, 996 (9th Cir. 1998), *cert. denied*, 525 U.S. 1141 (1999).

Here, while Appellants did not fully flesh out the arguments of continuous accrual, they did raise the argument at least somewhat during the hearing before the Bankruptcy Court on the Appellee's motion to dismiss. (AE at 181) ("The problem with the tentative ruling, going down it in order: The first paragraph says that the fiduciary of the cause of action is time-barred. There are actually two causes of action there. And you can't have anything time-barred without an appreciable injury and awareness of it." (cleaned up)); (AE 186) ("You can have a series of acts, series of separate breaches of fiduciary duty period of time. If one of them is within the statutory time period, then it's actionable. And [in] spite of that, . . . [the *Tibble*] decision describes the fact . . . that fiduciary duties, or at least the ones that they were examining there, are continuing in nature.").

Because Appellants did raise the issue, at least implicitly, this Court will reach the merits of the argument.

2. Continuous Accrual Doctrine Applies to Appellants' Claim Arising from Alleged Failure to Recover Rents

Appellants contend the second claim for relief based on the Trustee's failure to seek recovery of any rents paid to the Debtor reaches back to on or after February 17, 2018 (four years prior of their filing of the Complaint) based on the continuous accrual doctrine. (*Id.* at 39). Appellee argues that the continuous accrual doctrine does not apply because: (1) federal law governs accrual for this claim; (2) Appellants reliance on *Tibble* is misplaced; (3) damages arose (and began tolling at latest at Appellants' 2016 letter to the trustee (the "2016 Letter")); and (4) Appellants are also barred by the doctrine of laches. (RB at 23–27).

First, Appellants' claim arises under a breach of California law, not federal law. The Bankruptcy Court itself already determined that Appellants' claims arise under state law even though the claim for relief was against a Chapter 7 trustee. (*See* Appellants' Supp. Excerpts of Record (Docket 16); AE 191:12-17). While Appellee does not identify the federal law under which she contends the claim arises, Appellants are correct that there is no federal common law claim for breach of fiduciary duties against a bankruptcy trustee. *See In re Kenneth C. Casey, Inc.*, No. AP 21-1070 TBM, 2022 WL 2198882 at 10–11 (Bankr. D. Colo. June 17, 2022); *see also Erie Ry. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

Second, Appellants' reliance on *Tibble v. Edison Int'l*, 575 U.S. 523, 530, 135 S. Ct. 1823, 191 L.Ed. 2d 795 (2015) is not misplaced and their argument relying on additional authority is well taken. The Supreme Court in *Tibble* did examine a trustee's fiduciary relationship in the ERISA context; however, it did not make its determination solely based on statutory interpretation. *Id.* at 528. The Court looked at the breach in the context of the "nature of the fiduciary duty" and "trust-law principles." *Id.* (ruling "the Ninth Circuit erred by applying a statutory bar to a claim of a "breach or violation" of a fiduciary duty without considering the nature of the fiduciary duty"). *Tibble* is applicable to understanding the fiduciary duty given that it involved a question of the trustee's continuing obligation to monitor the investment portfolio. *Id.* at 529. Further, Appellants cite additional case law which applies the *Tibble* analysis to other fiduciary contexts beyond ERISA. (OB at 21); *see also Aryeh v. Canon Business Solutions, Inc.*, 55 Cal. 4th 1185, 1196, 151 Cal. Rptr. 3d 827 (2015) (applying continuous accrual doctrine in Unfair Competition Law context and noting that "the nature of the right sued upon and the circumstances attending its invocation control the point of accrual.") (internal quotations omitted); *see also Nishiuchi v. Ting*, No. G049903, 2015 WL 3542354, at *6–7 (Cal. Ct. App. June 5, 2015) (applying continuous accrual doctrine in the context of fiduciary breach in a limited partnership).

Third, Appellee's argument that damages began tolling at the latest with Appellants' 2016 Letter is contrary to the case law and the facts of the case. Appellants allege that the Appellee was under a continuous duty to collect rental payments for use of estate property. (OB at 39). Appellee contends that the Appellants were put on notice that she did not intend to administer the Real Properties when she filed the Initial RND in 2011. However, Appellee cites no authority for this proposition and does not explain how Appellants could be on notice of a breach of fiduciary duty based on an unapproved RND alone. A trustee does not end its fiduciary obligation without approval of an RND. *See In re Reed*, 940 F.2d 1317, 1323 (9th Cir. 1991) (finding trustees cannot abandon assets absent court approval); *U.S. ex rel. Willoughby v. Howard*, 302 U.S. 445, 450 (1938) ("[E]very trustee . . . has the duty of exercising reasonable care in the custody of the fiduciary estate unless relieved of such duty by agreement, statute, or order of court."). The 2011 RND therefore only gave notice that Appellee would stop administering the estate once she was excused by the court, an excusal which never came to pass.

Appellee then contends that at latest, the claim accrued in 2016 because Appellants sent the 2016 Letter to her, which shows they knew Appellee did not intend to administer the rent the Debtor's wife was collecting on the Real Properties and Appellants believed this failure to be a breach of fiduciary duty. (RB at 19). Appellants cite compelling, albeit not entirely analogous, case law to support their argument that the doctrine of continuous accrual applies to the set of facts before the Court. *See Tsemetzin v. Coast Fed. Sav. & Loan Assn.*, 57 Cal. App. 4th 1334, 1344, 67 Cal. Rptr. 2d 726 (1997) (applying the doctrine of continuous accrual where a lessee failed to pay the full rental payment due because "statute begins to run on such severable obligations from the time performance of *each* is due.") (emphasis in original); *see also Aryeh*, 55 Cal. 4th at 1196 (applying continuous accrual doctrine in Unfair Competition Law context); *see also Nishiuchi*, 2015 WL 3542354, at *6–*7 (applying continuous accrual doctrine in the context of fiduciary breach in a limited partnership).

Appellee cites *Genisman v. Hopkins Carley*, 29 Cal. App. 5th 45, 239 Cal. Rptr. 3d 780 (2018) for the proposition that a claim accrues at the point of injury in a breach of fiduciary duty claim. In *Genisman*, a plaintiff's claim against an attorney for alleged violation of fiduciary duty was barred by the statute of limitation on the basis that the plaintiff's injury accrued when he learned of the mistake and incurred litigation costs defending a suit arising from the disputed conduct. *Id.* at 52–53. The attorney's fiduciary duty in *Genisman* involved a single distinct breach—for allegedly failing to disclose contract changes between an initial and final draft—rather than an ongoing duty involving a series of breaches over time. In this case, the alleged failure to collect rent involves a series of alleged violations for failure with each uncollected payment. Appellee's additional authority fails to persuade the Court because those cases involve distinct breaches of duties rather than ongoing duties with many breaches as is alleged here. *See Spellis v. Lawn*, 200 Cal. App. 3d 1075, 246 Cal. Rptr. 385 (Ct. App. 1988), *reh'g denied and opinion modified* (May 23, 1988) (finding the statute of limitations began tolling when the defendant father disappeared, failed to pay child support payments, and left his ex-wife and children without a reasonable expectation of future payment).

Fourth, Appellee's argument that Appellants are barred by the doctrine of laches fails at this stage of the litigation. Application of laches is often not appropriate at the summary judgment stage making application here, at the motion to dismiss stage, inappropriate as well. *See Foster v. Metro. Life. Ins. Co.*, 243 F. App'x 208, 210 (9th Cir. 2007) ("'[b]ecause the application of laches depends on a close evaluation of all the particular facts in a case, it is seldom susceptible of resolution by summary judgment.'"). Appellee cites one case from 1893 to support her argument but does not explain how the general rule of laches articulated in the case applies to the present situation or how Appellants engaged in "unreasonable delay." (RB at 28); *see also Chapman v. Bank of California*, 97 Cal. 155, 159, 31 P. 896 (1893).

3. Appellants Pled Sufficient Evidence Under a Rule 12(b)(6) Standard to Show that their Claim Arising from the Alleged Waste to Real Property did not Arise Before Spring 2019.

In their Complaint, Appellants pled that they perceived their injury when they learned of the deterioration of the Varna Residence in spring of 2019 when they saw the Debtor's reference to "deferred maintenance." (OB at 39; AE at 81). Appellee argues the Bankruptcy Court was correct to apply the statute of limitations because Appellants' claims accrued on the date Appellants were put on notice that she neither intended to administer the Real Properties nor take action as to their management—namely on June 21, 2011, with the Initial RND. (RB at 18). As noted in the above section, Appellee does not cite authority explaining how an initial unapproved RND is sufficient to put Appellants on notice.

Appellants argue the discovery rule, which "postpones [the] accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action", should apply. *Aryeh*, 55 Cal. 4th at 1192; *see Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 397, 87 Cal. Rptr. 2d 453 (1999). Both parties agree that "[i]t is the perception of harm that triggers the discovery rule. '[P]laintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation.'" (OB at 36–37 (quoting *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal.4th 797, 808, 27 Cal. Rptr. 3d 661 (2005); RB at 18).

Appellants argue that they had no capacity to investigate the Varna Property for any waste as the property entered the bankruptcy estate and "[t]he Trustee is the sole representative of the bankruptcy estate." *In re Zavala*, 444 B.R. 181, 189 (Bankr. E.D. Cal. 2011). Appellants further argue that the fiduciary relationship complicates the discovery rule because "[w]here a fiduciary relationship exists, facts which ordinarily require investigation may not incite suspicion [citation] and do not give rise to a duty of inquiry [citation]." *See Nishiuchi*, 2015 WL 3542354, at *7 (quoting *Hobbs v. Bateman Eichler, Hill Richards, Inc.*, 164 Cal.App.3d 174, 201–02, 210 Cal. Rptr. 387 (1985)) (alterations in original). Based on the pleadings, Appellants allege that they conducted sufficient investigation of the Varna Property through reading documents where Debtor discussed the state of the property. (AE at 29). After learning of "deferred maintenance," Appellants then informed Appellee of the alleged waste, indicating spring 2019 was the point of discovery. Based on the pleadings, Appellants did not become aware of the alleged waste until May 6, 2019. (AE at 29).

Nonetheless, "[a] claim may be dismissed under Rule 12(b)(6) on the ground that it is barred by the applicable statute of limitations only when 'the running of the statute is apparent on the face of the complaint." *Von Saher*, 592 F.3d at 969. Appellee, however, fails to point to an earlier, time-barred discovery of waste and relies on the

2011 RND as the point of notice. This is an inaccurate reading of the law that is contrary to the general rule that the statute of limitations begins to run at the point of accrual where all elements of the claim—wrongdoing, harm, and causation — have come into existence. *Aryeh*, 55 Cal. 4th at 1191. Appellee does not explain how all the elements of the claim either existed or were known earlier than the pleaded date of May 6, 2019. Because, as pleaded, the facts do not suggest Appellants were aware of any waste that would be barred by the statute of limitations, i.e., prior to February 17, 2018 (the date four years prior to the filing of the Complaint), the running of the statute if not apparent "on its face." *Von Saher*, 592 F.3d at 969.

Appellants have adequately pleaded their first claim and Appellee fails to show it is barred by the applicable statute of limitations.

B. Quasi-Judicial Immunity

The Ninth Circuit affords quasi-judicial immunity to bankruptcy trustees when they are "exercising judgments while performing acts closely related to the judicial process." *Burton v. Infinity Cap. Mgmt.*, 862 F.3d 740, 748 (9th Cir. 2017) (citing *In re Castillo*, 297 F.3d 940, 946–47 (9th Cir. 2002)). While immunity covers claims pertaining to "ordinary negligence," it does not extend to "claims involving gross negligence or willful misconduct." *Shoemaker v. Siegel*, No. 1:17-BK-015182, 2017 WL 3671154, at *4 (C.D. Cal. Aug. 25, 2017), *aff'd sub nom. In re Shoemaker*, 749 F. App'x 565 (9th Cir. 2019) (citing *In re Cont'l Coin Corp.*, 380 B.R. 1, 11–15 (Bankr. C.D. Cal. 2007)). "California courts define gross negligence 'as either a want of even scant care or an extreme departure from the ordinary standard of conduct.'" *Id.* (citing *City* *of Santa Barbara v. Superior Ct.*, 41 Cal. 4th 747, 754, 62 Cal.Rptr.3d 527 (2007)).

This Court agrees with the Bankruptcy Court that Appellants' allegations in the Complaint identify Appellee's discretionary acts and decisions to refrain from taking actions, but have not adequately pled "a want of even scant care or an extreme departure from the ordinary standard of conduct." *City of Santa Barbara*, 41 Cal. 4th at 754 (internal quotations omitted).

V. CONCLUSION

Although Appellants' claim for relief for breach of fiduciary duty is not time-barred, Appellee is entitled to quasi-judicial immunity. Accordingly, the Dismissal Order is **AFFIRMED *in part* and REVERSED *in part***. The case is **REMANDED** to determine whether amending the Complaint would be futile.

IT IS SO ORDERED.

Dated: January 25, 2024

/s/ *Michael W. Fitzgerald*
MICHAEL W. FITZGERALD
United States District Judge

cc: USBC

APPENDIX C

LEWIS BRISBOIS BISGAARD & SMITH LLP
MICHAEL B. WILK, SB# 109151
E-mail: Michael.Wilk@lewisbrisbois.com
AVI E. MUHTAR, SB# 260728
E-mail: Aviram.Muhtar@lewisbrisbois.com
633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: 213.250.1800
Facsimile: 213.250.7900

Attorneys for Defendant Amy Goldman, as an individual and in her capacity as Chapter 7 trustee

CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

Case No.: 1:11-BK-11603-VK
Chapter 7
Adv. No.: 1:22-AP-01014-VK

In re: KEVAN HARRY GILMAN,
Debtor.

TAMMY PHILLIPS and TAMMY R. PHILLIPS, a PROF. LAW CORP., in their own rights and in the name of the United States for their own use as injured

entities,
Plaintiffs,

v.

AMY L. GOLDMAN, as an individual and in her capacity as Chapter 7 Trustee; and DOES 1 to 10, her sureties,
Defendants.

Filed & Entered: June 9, 2022
CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Pgarcia DEPUTY CLERK

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

Date: June 1, 2022
Time: 1:30 p.m.
Place: Courtroom 301
21041 Burbank Boulevard
Woodland Hills, CA 91367

Before VICTORIA S. KAUFMAN, United States Bankruptcy Judge.

The *Motion to Dismiss the Complaint Pursuant Federal Rule of Civil Procedure 12(b)(6)* [Docket No. 12] (the "Motion") filed by Defendant Amy Goldman, in her individual capacity and in her capacity as Chapter 7 trustee of the Bankruptcy Estate of Kevin Harry Gilman (~~the "Trustee" or~~ "Defendant"), came on for hearing after due and proper notice on June 1, 2022 at 1:30 p.m. in Courtroom 301 before the Honorable Victoria Kaufman, United States Bankruptcy Judge for the Central District of California, presiding. Michael B. Wilk, esq. and Avi E. Muhtar, esq. of Lewis Brisbois Bisgaard & Smith LLP appeared on behalf of Defendant. Plaintiffs appeared through their counsel, Charles Q. Jakob, esq. All other appearances were stated as on the record.

The Court, having considered the Motion, the pleadings filed in opposition thereto [Docket *Nos. 17, 18 and* 19], the reply filed in support of the Motion [Docket No 343, 20], the record in this Adversary Proceeding, the arguments of counsel at the hearing on the Motion, and based on this Court's findings of fact and conclusions of law set forth on the record of this Adversary Proceeding, *including that Plaintiffs' causes of action for breach of fiduciary duty are time-barred pursuant to Cal. Code of Civil Procedure § 343*, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Motion is granted~~ in its entirety with no leave to amend as to all causes of action~~.

IT IS FURTHER ORDERED that this Adversary Proceeding is dismissed with prejudice.

Dated: June 9, 2022

/s/ *Victoria S. Kaufman*
Victoria S. Kaufman
United States Bankruptcy Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-2249

In re: KEVAN HARRY GILMAN,
Debtor,

TAMMY R. PHILLIPS; TAMMY R. PHILLIPS,
APLC,
Plaintiffs-Appellants,

v.

AMY L. GOLDMAN,
Defendant-Appellee.

Filed: November 7, 2025

Appeal from the United States District Court
for the Central District of California

ORDER

MURGUIA, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be heard en banc pursuant to Federal Rule of Appellate Procedure 40(c) and Circuit Rule 40-3.