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OF THE NINTH CIRCUIT

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	EC-11-1706-KiDJu
)		
DANA PAUL FOSTER and CHERYL)	Bk. No.	11-17709-WRL
DEANN FOSTER,)		
)	Adv. No.	11-1252-WRL
Debtors.)		
_____)		
)		
DANA PAUL FOSTER; CHERYL)		
DEANN FOSTER,)		
)		
Appellants,)		
)		
v.)	MEMORANDUM¹	
)		
WILMA CLARICE SLIGAR,)		
)		
Appellee.)		
_____)		

Submitted Without Oral Argument
on October 19, 2012,²

Filed - December 14, 2012

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable W. Richard Lee, Bankruptcy Judge, Presiding

Appearances: William L. Alexander, Esq. on brief for appellants;
Benny D. Barco, Esq. of Pascuzzi, Moore & Stoker,
APC on brief for appellee.

Before: KIRSCHER, DUNN, and JURY, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

² On August 27, 2012, we issued an order making the parties' appearance at oral argument optional. Neither party appeared at oral argument on October 19, 2012. Therefore, this appeal is deemed submitted on the briefs and record provided.

1 Appellants, chapter 13³ debtors Dana Paul Foster ("Dana") and
2 Cheryl Deann Foster ("Cheryl")(collectively "Fosters"), appeal an
3 order denying their motion to dismiss Wilma Clarise Sligar's
4 ("Sligar") complaint for nondischargeability of debt and denial of
5 discharge based on various tort claims, including fraud and elder
6 abuse. The bankruptcy court further ordered that it was
7 abstaining from hearing Sligar's tort claims against Fosters, that
8 it was granting Sligar relief from the automatic stay to pursue
9 her tort claims in state court, and that it was administratively
10 closing the adversary proceeding. Because the bankruptcy court
11 should have dismissed the complaint without prejudice, we VACATE
12 in part and REMAND.

13 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

14 A. Events leading to the adversary complaint.

15 The following facts are as alleged in Sligar's state court
16 complaint and in her adversary complaint against Fosters. Cheryl
17 is the third of three daughters of Sligar; Dana is Cheryl's
18 husband and Sligar's son-in-law. Sligar currently lives with her
19 second daughter, Betty Briscoe ("Briscoe"). Since September 2010,
20 Briscoe has had power of attorney for Sligar under CAL. PROB. CODE
21 § 4401 and is authorized to engage in many transactions on
22 Sligar's behalf, including prosecuting and/or defending claims and
23 litigation. Briscoe is not an attorney at law.

24 Shortly after Sligar's husband passed away and before Briscoe
25 became Sligar's caretaker, Fosters cared for Sligar and assisted

26
27 ³ Unless specified otherwise, all chapter, code, and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 her with her daily needs. Cheryl was named on at least one of
2 Sligar's bank accounts to assist Sligar with payment of her
3 monthly financial obligations. Sligar alleged that between 2007
4 and January 2010, Cheryl and/or Fosters made unauthorized
5 withdrawals from Sligar's bank account, made unauthorized cash
6 advances on Sligar's credit card, forged Sligar's signature on
7 certain checks made payable to Sligar, and failed to pay some of
8 Sligar's bills. Sligar further alleged that Fosters conspired to
9 deceive her into signing a blank quitclaim deed conveying title to
10 real property she owned in Florida to Cheryl, which Cheryl
11 subsequently conveyed to Dana. Sligar asserted in her state court
12 complaint that at no time during this nearly three year period was
13 she physically or mentally unable to sign her own signature due to
14 illness or any other reason. She further asserted that Cheryl did
15 not have power of attorney, or conservatorship, or any legal
16 authorization to sign Sligar's signature. Sligar alleged that
17 Fosters fraudulently acquired from her approximately \$660,000 in
18 real and personal property.

19 In January 2010, Sligar contacted Kern County Adult
20 Protection Services and the Kern County Sheriff's Office to
21 investigate the allegations against Fosters. They investigated
22 the matter, but the county ultimately decided not to prosecute any
23 criminal charges against Fosters.

24 Based on the above conduct, in July 2010, Sligar, represented
25 by counsel, sued Fosters civilly in state court alleging claims of
26 financial elder abuse, fraud and conspiracy to defraud,
27 constructive trust, unjust enrichment, and for an accounting. The
28 matter was set for trial on August 8, 2011. However, the trial

1 was stayed once Fosters filed their chapter 13 bankruptcy case on
2 July 7, 2011.

3 **B. The adversary complaint and motion to dismiss.**

4 Sligar filed a proof of claim in Fosters' bankruptcy case for
5 the alleged debt on August 9, 2011. The proof of claim was signed
6 by Briscoe as attorney-in-fact for Sligar. No objections were
7 filed.

8 Based on the above allegations, on October 4, 2011, Briscoe,
9 as attorney-in-fact for Sligar, filed a complaint seeking to
10 except Sligar's debt from discharge under §§ 523(a)(2)(A),
11 (a)(2)(B), (a)(4) and (a)(6) and to deny Fosters' discharge under
12 727(a)(2), (a)(3)(A), (a)(4)(A), and (a)(4)(B). Although the
13 complaint was signed by Briscoe as attorney-in-fact for Sligar,
14 Sligar did sign the adversary complaint cover sheet. The caption
15 on the adversary complaint shows Sligar as the pro se plaintiff
16 and Fosters as defendants. All claims alleged in the complaint
17 were for injuries to Sligar; Briscoe sought no personal relief in
18 the matter.

19 On November 2, 2011, Fosters moved to dismiss the adversary
20 complaint under Civil Rule 12(b)(1) (the "Motion to Dismiss"),
21 contending the bankruptcy court lacked subject matter jurisdiction
22 because Briscoe lacked standing to bring the adversary complaint
23 on behalf of Sligar. Specifically, Fosters argued that, based on
24 the unpublished case of Lomax v. City of Antioch Police Officers,
25 2011 WL 4345057 (N.D. Cal. Sept. 14, 2011), which Fosters argued
26 was identical to the instant case, Briscoe, a non-attorney, lacked
27 standing to file an action on behalf of Sligar, and her power of
28 attorney for Sligar did not remedy the standing issue. Fosters

1 further argued that Sligar should not be allowed to amend the
2 complaint because the time to file such complaint had passed.

3 Sligar opposed the Motion to Dismiss, contending that she,
4 not Briscoe, had brought the adversary complaint against Fosters,
5 and that Briscoe only signed the complaint as an accommodation to
6 Sligar's physical disabilities. No evidence was provided as to
7 the extent or existence of Sligar's alleged disability.

8 In their reply, Fosters contended that Civil Rule 11 required
9 that either Sligar or her attorney at law sign the adversary
10 complaint, so the complaint signed by Briscoe, her attorney-in-
11 fact, was defective. Fosters also argued that Sligar had not
12 provided any cogent reason for why she failed to sign her own
13 complaint.

14 The bankruptcy court held a status conference and a hearing
15 on the Motion to Dismiss on November 30, 2011. In its very short
16 oral ruling on the Motion to Dismiss, the bankruptcy court denied
17 the motion, finding that the adversary complaint had been filed
18 for the benefit of Sligar. However, the court did inform Briscoe
19 that although she had power of attorney for Sligar, she could not
20 appear in court for Sligar or represent her; Sligar had to
21 represent herself or get an attorney. The bankruptcy court then
22 went on to rule that it was abstaining from hearing Sligar's tort
23 claims against Fosters, that it was granting Sligar relief from
24 the automatic stay to pursue her tort claims in state court, and
25 that it was administratively closing the adversary proceeding
26 pending a final adjudication from the state court. Later that
27 same day, the bankruptcy court entered civil minutes stating that
28 Fosters' Motion to Dismiss was denied for the reasons stated on

1 the record.

2 On December 14, 2011, Fosters filed a premature Notice of
3 Appeal and motion for leave to appeal the bankruptcy court's
4 denial of their Motion to Dismiss. The bankruptcy court then
5 entered a written order with respect to its November 30 decision
6 on December 16, 2011, thereby curing Fosters' Notice of Appeal.
7 Rule 8002(a). That order makes no reference to the Motion to
8 Dismiss or its denial.

9 In their motion for leave to appeal, Fosters contended that
10 the bankruptcy court's order was tantamount to a final order
11 because it effectively precluded them from challenging the
12 bankruptcy court's subject matter jurisdiction over the adversary
13 proceeding until after the state court action was adjudicated. In
14 short, argued Fosters, if the Panel determined Briscoe lacked
15 standing to file the adversary complaint, Sligar would be unable
16 to object to dischargeability of the debt, and therefore the state
17 court action could be avoided.

18 On February 6, 2012, a motions panel granted leave to appeal
19 to the extent the order was interlocutory. 28 U.S.C. § 158(a)(3).
20 However, the motions panel's concern about the finality of the
21 bankruptcy court's order, and the basis for granting leave,
22 centered on the issue of the bankruptcy court's decision to
23 abstain from hearing the tort claims. That is not the issue
24 Fosters are appealing. Their appeal is based entirely on the
25 bankruptcy court's decision to deny their Motion to Dismiss, and
26 that ruling does not appear anywhere in the order on appeal. The
27 motions panel does not appear to have been aware that the order at
28 issue failed to dispose of the Motion to Dismiss. As a result,

1 Fosters' appeal appears to remain interlocutory because we lack
2 any written order from the bankruptcy court expressly addressing
3 it. Nevertheless, we conclude that the bankruptcy court's oral
4 ruling, although interlocutory in nature, "merged" into the
5 written order because that order implicitly denied the Motion to
6 Dismiss based on the court's action in administratively closing
7 the adversary proceeding. Therefore, the order on appeal is
8 final. See Am. Ironworks & Erectors, Inc. v. N. Am. Const. Co.,
9 248 F.3d 892, 897-98 (9th Cir. 2001).

10 **II. JURISDICTION**

11 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
12 and 157(b)(2)(I) and (J). We have established our jurisdiction
13 above under 28 U.S.C. § 158.

14 **III. ISSUE**

15 Did the bankruptcy court err when it denied the Motion to
16 Dismiss?

17 **IV. STANDARD OF REVIEW**

18 We review the trial court's determination of subject matter
19 jurisdiction de novo. Nurse v. United States, 226 F.3d 996, 1000
20 (9th Cir. 2000).

21 **V. DISCUSSION**

22 Although the bankruptcy court sua sponte decided to abstain
23 from hearing Sligar's tort claims, granted relief from the
24 automatic stay so she could continue with her claims in state
25 court, and stayed and administratively closed the adversary
26 proceeding, Fosters contend only on appeal that the bankruptcy
27 court erred in not granting their Motion to Dismiss under Civil
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1 Rule 12(b)(1). Therefore, we address only this issue.⁴

2 **A. The bankruptcy court erred when it denied the Motion to**
3 **Dismiss.**

4 **1. Standing and Civil Rule 12(b)(1)**

5 Article III limits a federal court's subject matter
6 jurisdiction by requiring that plaintiffs have standing. Chandler
7 v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir.
8 2010). "Standing addresses whether the plaintiff is the proper
9 party to bring the matter to the court for adjudication." Id.
10 (citations omitted). Regardless of which type of standing is at
11 issue, constitutional or prudential, both turn on whether the
12 plaintiff can allege an "injury-in-fact" he or she suffered as a
13 result of the defendant's alleged misconduct. Lujan v. Defenders
14 of Wildlife, 504 U.S. 555, 560-61 (1992); Powers v. Ohio, 499 U.S.
15 400, 410-11 (1991).

16 Because standing pertains to a federal court's subject matter
17 jurisdiction, a motion to dismiss for lack of standing is properly
18 brought as a motion to dismiss for lack of subject matter
19 jurisdiction under Civil Rule 12(b)(1). White v. Lee, 227 F.3d
20 1214, 1242 (9th Cir. 2000). When faced with a Civil Rule 12(b)(1)
21 motion, the plaintiff bears the burden of proving the existence of
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23 ⁴ In their statement of issues presented in their opening
24 brief, Fosters also questioned the bankruptcy court's decision to
25 administratively close the adversary proceeding. However, they
26 failed to brief the issue, other than stating that the proceeding
27 should not have been closed. As a result, this issue has been
28 abandoned. City of Emeryville v. Robinson, 621 F.3d 1251, 1261
(9th Cir. 2010)(appellate court in this circuit "will not review
issues which are not argued specifically and distinctly in a
party's opening brief."). For this same reason, Fosters have also
waived any argument as to the propriety of the bankruptcy court's
decision to abstain and to grant relief from stay.

1 the court's subject matter jurisdiction. Thompson v. McCombe,
2 99 F.3d 352, 353 (9th Cir. 1996).

3 A challenge to subject matter jurisdiction may be facial or
4 factual. White, 227 F.3d at 1242. Fosters' attack on the
5 adversary complaint - that Briscoe lacked standing to bring it on
6 Sligar's behalf - is a facial attack. See In re Beach, 447 B.R.
7 313, 317 (Bankr. D. Idaho 2011)(assertion that debtors lack
8 standing to prosecute their claims is a facial subject matter
9 jurisdiction attack); We Are Am./Somos Am., Coal. of Ariz. v.
10 Maricopa Cnty. Bd. of Supervisors, 809 F.Supp.2d 1084, 1089
11 (D. Ariz. 2011)(lack of standing is facial challenge). When the
12 motion constitutes a facial attack, the court must presume the
13 factual allegations of the complaint to be true and construe them
14 in the light most favorable to the plaintiff. Wolfe v. Strankman,
15 392 F.3d 358, 362 (9th Cir. 2004).

16 **2. Analysis**

17 It is undisputed that Briscoe has power of attorney for
18 Sligar and is authorized to engage in many activities on Sligar's
19 behalf, including prosecuting and/or defending "claims and
20 litigation." See CAL. PROB. CODE §§ 4450(d) and 4459.⁵ However,

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22 ⁵ CAL. PROB. CODE § 4450(d) provides:

23 By executing a statutory form power of attorney with respect
24 to a subject listed in Section 4401, the principal, except as
25 limited or extended by the principal in the power of
attorney, empowers the agent, for that subject, to do all of
the following:

26 (d) Prosecute, defend, submit to arbitration, settle, and
27 propose or accept a compromise with respect to, a claim
existing in favor of or against the principal or intervene in
28 litigation relating to the claim.

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⁵(...continued)

CAL. PROB. CODE § 4459 provides:

In a statutory form power of attorney, the language with respect to claims and litigation empowers the agent to do all of the following:

(a) Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, cross-complaint, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief.

(b) Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae.

(c) In connection with litigation:

(1) Procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use any available procedure to effect, enforce, or satisfy a judgment, order, or decree.

(2) Perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation.

(d) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation.

(e) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.

(f) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary,
(continued...)

1 these statutes are silent as to whether Briscoe can sign a
2 complaint as attorney-in-fact for Sligar. The bankruptcy court
3 found that even though Briscoe signed the complaint for Sligar,
4 the claims were really brought on Sligar's behalf, and therefore
5 it was essentially Sligar who had filed the complaint. The court
6 cited no authority for its decision. Fosters contend that the
7 bankruptcy court erred in denying the Motion to Dismiss because:
8 (1) Sligar was required to sign the adversary complaint under
9 Civil Rule 11; and (2) Briscoe lacked standing to file it, and her
10 capacity as Sligar's attorney-in-fact did not permit her to sign
11 the complaint on Sligar's behalf.

12 To be certain, nothing prevents Sligar from pursuing her
13 complaint on her own behalf. Johns v. Cnty. of San Diego,
14 114 F.3d 874, 876 (9th Cir. 1997) ("While a non-attorney may appear
15 pro se on his own behalf, he has no authority to appear as an
16 attorney for others than himself.") (citations and internal
17 quotation marks omitted). The question here is whether Briscoe,
18 as Sligar's attorney-in-fact, can sign a complaint on Sligar's
19 behalf. Case law is rather sparse on the issue of whether an
20 attorney-in-fact can sign a complaint or otherwise appear on
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22 ⁵(...continued)

23 concerning the principal or some other person, or with
24 respect to a reorganization proceeding, or with respect to an
25 assignment for the benefit of creditors, receivership, or
26 application for the appointment of a receiver or trustee
27 which affects an interest of the principal in property or
28 other thing of value.

(g) Pay a judgment against the principal or a settlement made
in connection with litigation and receive and conserve money
or other thing of value paid in settlement of or as proceeds
of a claim or litigation.

1 behalf of her principal. However, the courts that have addressed
2 the matter have concluded that she cannot.

3 The leading California case on this issue is Drake v.
4 Superior Court, 26 Cal. Rptr. 2d 829 (Cal. Ct. App. 1994). In
5 Drake, petitioner Drake had power of attorney permitting him to
6 act for his principal in matters relating to claims and
7 litigation. Representing himself on the pleading as the
8 attorney-in-fact for the principal, Drake attempted to obtain a
9 temporary restraining order for his principal against her
10 estranged husband. He also attempted to appear in court on the
11 principal's behalf, but the court refused to let Drake make the
12 appearance. On appeal, Drake contended that because the principal
13 could appear in court on her own behalf, and because the statutory
14 form power of attorney authorized him to act as agent for his
15 principal in litigation, he could "step into the shoes" of the
16 principal and appear for her in the litigation without a lawyer.
17 Id. at 831. The California Court of Appeals disagreed, noting
18 that the unlicensed practice of law is categorically prohibited in
19 California, and the Power of Attorney Act did not provide an
20 exception to this rule:

21 Long before passage of the Power of Attorney Act, the law
22 distinguished between an attorney in fact and an attorney
23 at law and emphasized that a power of attorney is not a
24 vehicle which authorizes an attorney in fact to act as an
25 attorney at law. If the rule were otherwise, the State
26 Bar Act could be relegated to contempt by any layman who
27 secured from his principal an ordinary power of attorney,
28 for the purpose of representing him in pending
litigation.

26 Id. (internal citations and quotations omitted). Therefore, the
27 court concluded, Drake could not "use the statutory form power of
28 attorney as a device to practice law for his principal." Id. at

1 832-33. See In re Marriage of Caballero, 33 Cal. Rptr. 2d 46, 52
2 (Cal. Ct. App. 1994)("Despite broad statutory language of the
3 power of attorney with respect to claims and litigation, the
4 attorney in fact may not act as an attorney at law on behalf of
5 his principal, even though the principal could appear in propria
6 persona"). See Ryan v. Hyden, 2012 WL 4793116 (S.D. Cal.
7 Oct. 9, 2012)(nonlawyer son with power of attorney for parents
8 could not draft pleadings and pursue claims on their behalf as it
9 constituted the unauthorized practice of law under California law;
10 complaint dismissed); Lomax, 2011 WL 4345057, at *3-4 (uninjured
11 father acting as attorney-in-fact for injured son lacked standing
12 to bring complaint on behalf of son and other family members for
13 their injuries; power of attorney did not permit father to engage
14 in the unauthorized practice of law; motion to dismiss complaint
15 granted); Hughes v. Laguna Honda Hosp., 2000 U.S. Dist. LEXIS
16 10855 (N.D. Cal. Aug. 1, 2000)(daughter with power of attorney for
17 mother authorizing her to act on mother's behalf regarding "claims
18 and litigation" did not allow daughter to sign and file complaint
19 for mother's claims on her behalf; complaint dismissed without
20 prejudice); 6A Cal. Jur. 3d, Attorneys at Law § 135 (3d ed. 2012)
21 (one may not act as an attorney for another by virtue of a special
22 power of attorney; power of attorney is not a vehicle for acting
23 as an attorney at law).

24 Courts outside of California have reached the same result.
25 Haynes v. Jackson, 744 A.2d 1050, 1053-54 (Me. 2000)(although
26 state power of attorney statute does not prevent principal from
27 granting his attorney-in-fact the power to appear pro se on the
28 principal's behalf, the statute prohibiting the unauthorized

1 practice of law limits its scope; nonlawyer wife with power of
2 attorney for husband could not sign pleadings or file appeals or
3 appear in court for husband; motion to dismiss appeal granted);
4 In re Riebel, 625 N.W.2d 480, 482-83 (Minn. 2001)(nonlawyer
5 daughter with power of attorney for mother authorizing daughter to
6 handle mother's legal matters did not allow daughter to sign
7 pleadings or appear on mother's behalf because such actions
8 constituted the unauthorized practice of law under Minnesota law;
9 motion to dismiss granted); Risbeck v. Bond, 885 S.W.2d 749, 750
10 (Mo. App. Ct. 1994), cert. denied, 514 U.S. 1110 (1995)(reviewing
11 state power of attorney statute and determining that an
12 attorney-in-fact who is not an attorney at law cannot file
13 pleadings for another or otherwise practice law; order dismissing
14 petition affirmed); In re Estate of Friedman, 482 N.Y.S.2d 686,
15 687 (N.Y. Surr. Ct. 1984) (nonlawyer son with power of attorney
16 for mother authorizing son to act for mother with respect to
17 "claims and litigation" could not pursue proceeding to compel
18 production of a will as it constituted the unauthorized practice
19 of law; petition dismissed); Marin v. Kandpal, 2010 WL 3596043
20 (Ohio. App. Ct. Sept. 16, 2010), appeal denied, 940 N.E.2d 987
21 (Ohio 2011) (nonlawyer son with power of attorney for mother could
22 not file complaint for injunctive relief on behalf of mother since
23 it constituted practicing law without a license; dismissal
24 affirmed).

25 Although Sligar argues that Briscoe did nothing more than
26 sign the complaint for her, this is a distinction without a
27 difference. In Hughes, the daughter signed and filed a complaint
28 on her mother's behalf as her attorney-in-fact for injunctive

1 relief against the hospital that was caring for the mother.⁶
2 2000 U.S. Dist. LEXIS 10855, at *2. The hospital moved to dismiss
3 because the mother herself failed to sign the complaint. Id. The
4 daughter contended she had the right to file the complaint on her
5 mother's behalf on account of her power of attorney, which
6 authorized her to act for her mother with respect to "claims and
7 litigation." Id. at *2-3. The district court disagreed, holding
8 that California courts have determined that a statutory power of
9 attorney form does not authorize the delegated attorney-in-fact to
10 represent the principal in court. Id. at *4 (citing Drake,
11 supra). Nonetheless, the court dismissed the complaint without
12 prejudice to allow the mother to proceed with her claims either on
13 her own behalf or with the representation of an attorney. Id.
14 at *5.

15 In Lomax, the father (Thomas) signed and filed a complaint
16 bringing claims on behalf of his son (Timothy) and other family
17 members for injuries the son and other family members allegedly
18 incurred during an incident involving police at Timothy's home.
19 2011 WL 4345057, at *1. Thomas was not involved in the incident.
20 Defendants moved to dismiss because Thomas lacked standing to
21 bring the action.⁷ Id. at *2. The district court agreed and
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24 ⁶ The daughter also brought claims for herself, but they were
25 dismissed for lack of subject matter jurisdiction. That issue had
26 no bearing on the district court's decision to dismiss the
27 mother's claims for her failure to sign the complaint. Hughes,
28 2000 U.S. Dist. LEXIS 10855, at *5-6.

⁷ Defendants also moved to dismiss for failure to state a
claim upon which relief can be granted, but because the court
determined that Thomas lacked standing to bring the action, it did
not reach that issue. Lomax, 2011 WL 4345057, at *2.

1 dismissed the complaint for lack of standing. Id. at *3. The
2 fact Thomas had power of attorney for Timothy did not remedy the
3 standing issue. It also did not allow Thomas to bring the action,
4 as the California statutory power of attorney form did not confer
5 authority on Thomas to practice law without a license. Id. at
6 *3-4. See also In re Marriage of Caballero, 33 Cal. Rptr. 2d at
7 47; Risbeck, 885 S.W.2d at 750; In re Estate of Friedman,
8 482 N.Y.S.2d at 687.

9 Lomax and Marin appear to be the only cases where defendants
10 specifically raised the issue of standing. In the other cases,
11 the courts simply determined that the actions of nonlawyer
12 attorneys-in-fact signing complaints and/or appearing for their
13 principals in court constituted the unauthorized practice of law
14 and dismissed the complaints on that basis. Therefore, without
15 even having to address the standing issue, the bottom line is that
16 Briscoe, as Sligar's attorney-in-fact, could not sign the
17 adversary complaint for Sligar. The fact Sligar signed the cover
18 sheet does not change our decision. Accordingly, we conclude the
19 bankruptcy court erred by not dismissing the adversary complaint.

20 We note that an action may be dismissed for lack of
21 subject-matter jurisdiction, without leave to amend, when it is
22 clear that the jurisdictional deficiency cannot be cured by
23 amendment. May Dep't Store v. Graphic Process Co., 637 F.2d 1211,
24 1216 (9th Cir. 1980). However, when the defect can be cured,
25 particularly in the case of a pro se complaint, the court should
26 not dismiss without leave to amend. See Lopez v. Smith, 203 F.3d
27 1122, 1130 (9th Cir. 2000)(en banc). We further note that
28 although Sligar was required to sign the adversary complaint

1 herself, the failure of a pro se litigant to sign the complaint is
2 merely a technical defect and does not subject the complaint to
3 dismissal. Memisevich v. St. Elizabeth's Med. Ctr., 443 F.Supp.2d
4 276, 283 (N.D.N.Y. 2006) (dismissal of pro se pleading for failure
5 to sign is inappropriate due to the great flexibility accorded pro
6 se litigants)(string citation omitted). "A bungled signature on a
7 pleading is merely a technical defect and not a substantive
8 violation of Rule 11, warranting the voiding of the complaint."
9 Edwards v. Groner, 116 F.R.D. 578, 579 (D.V.I. 1987)(citing
10 Covington v. Cole, 528 F.2d 1365, 1369-70 & n.7 (5th Cir. 1976);
11 Grant v. Morgan Guar. Trust Co. of N.Y., 638 F.Supp. 1528, 1531-32
12 n.6 (S.D.N.Y. 1986); Thiem v. Hertz Corp., 732 F.2d 1559, 1562-63
13 (11th Cir. 1984); and Becks v. Turner, 68 F.R.D. 466, 467
14 (E.D.N.Y. 1975)).

15 Despite Fosters' arguments to the contrary, we see no reason
16 why Sligar should not be allowed to amend the adversary complaint
17 with her signature. Alternatively, she could retain an attorney
18 to represent her.

19 VI. CONCLUSION

20 Because the bankruptcy court erred by not granting the Motion
21 to Dismiss, and because Fosters have not appealed any other
22 portions of the order on appeal, we VACATE in part only the
23 court's decision with respect to the Motion to Dismiss and REMAND
24 that matter with instruction that the bankruptcy court give
25 further consideration as to whether Sligar's complaint can be
26 amended, in the event the adversary proceeding is reopened to
27 determine the issue of the nondischargeability of Sligar's debt
28 and/or Fosters' discharge. As for the other matters decided by

1 the bankruptcy court in the order on appeal - abstention, stay
2 relief, and administrative closure of the adversary proceeding -
3 we offer no opinion.

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