UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, January 10, 2018
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A - Kathy Torres (559)499-5860; Department B - Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. 16-12900-B-7 **IN RE: ARTBEAT, INC., A WASHINGTON CORPORATION**
JTW-2

MOTION FOR COMPENSATION FOR JANZEN, TAMBERI & WONG, ACCOUNTANT(S)
12-8-2017 [42]

JANZEN, TAMBERI AND WONG/MV
HAGOP BEDOYAN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondents' defaults will be entered.

Movants will be awarded $2,920.00 in fees and reimbursed $23.92 in costs.

2. 13-15102-B-7 **IN RE: VICTOR MORALES AND MARIA BERUMEN**
TCS-2

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.
12-21-2017 [19]

VICTOR MORALES/MV
KENNETH JORGENSEN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

3. 13-15102-B-7 **IN RE: VICTOR MORALES AND MARIA BERUMEN**
TCS-3

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
12-21-2017 [23]

VICTOR MORALES/MV
KENNETH JORGENSEN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

4. 15-13712-B-7 **IN RE: LEO LOOZA**
JDW-2

MOTION TO AVOID LIEN OF CACH, LLC.
12-20-2017 [36]

LEO LOOZA/MV
JOEL WINTER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(e). Rule 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed. This motion and its supporting documents were filed on December 20, 2017. No proof of service has been filed since, and it is long past the three day deadline. Therefore, this motion is DENIED WITHOUT PREJUDICE.

5. 15-14912-B-7 **IN RE: STEVEN/ALTA ROSS**
JTW-2

MOTION FOR COMPENSATION FOR JANZEN, TAMBERI AND WONG, ACCOUNTANT(S)
12-8-2017 [38]

JANZEN, TAMBERI & WONG/MV
MARK ZIMMERMAN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Additionally, the motion was set on 28 days' notice, but stated that "any responding party need not file written opposition prior to the scheduled hearing. Oral argument may be presented at the time of the hearing." Local Rule 9014-1(f)(1) requires notices for motions that are set on 28 days' notice to include language that informs the respondent that written opposition must be filed at least 14 days prior to the hearing, otherwise the matter may be resolved without oral argument. The language included in this notice was incorrect, and therefore the motion is DENIED WITHOUT PREJUDICE.

6. 12-10513-B-7 **IN RE: JOSEPH HALLMARK**
TCS-2

MOTION TO AVOID LIEN OF LVNV FUNDING, LLC
12-21-2017 [21]

JOSEPH HALLMARK/MV
TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

7. 12-10513-B-7 **IN RE: JOSEPH HALLMARK**
TCS-3

MOTION TO AVOID LIEN OF CACH, LLC
12-21-2017 [25]

JOSEPH HALLMARK/MV
TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

8. 12-10513-B-7 **IN RE: JOSEPH HALLMARK**
TCS-4

MOTION TO AVOID LIEN OF DISCOVER BANK
12-21-2017 [29]

JOSEPH HALLMARK/MV
TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

9. 17-14315-B-7 **IN RE: DEBBIE PRIETO**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
11-9-2017 [5]

DEBBIE PRIETO/MV
DEBBIE PRIETO/ATTY. FOR MV.

NO RULING.

10. 12-19625-B-7 **IN RE: LUCAS RIANTO**
JDW-1

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
12-7-2017 [24]

LUCAS RIANTO/MV
JAMES MILLER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

The motion will be denied without prejudice because it was not properly served on the respondent, FIA Card Services, N.A. See Federal Rule of Bankruptcy Procedure 7004(h). While the debtor served the respondent's presumed attorney, which is permitted under FRBP 7004(h)(1), unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Doc. #33. The attorney to whom debtor made service to is presumably the attorney that represented the creditor that sued the debtor and obtained the judgment. Doc. #1, Schedule F. Schedule F was filed over five years ago. In re Villar states, quoting the Northern District Bankruptcy Court in In re Schoon, "Where the alternative to service by mail is hiring a process server to serve the papers in person, [process by first class mail made to a specifically named officer] seems like a small burden to require literal compliance with the rule." In re Villar, 317 B.R. 88 (9th Cir. 2004). Therefore this motion is DENIED WITHOUT PREJUDICE.

11. 17-14130-B-7 **IN RE: MARCO GONZALEZ AND BEATRIZ DEL CAMPO**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-11-2017 [37]

FREEDOM MORTGAGE
CORPORATION/MV
GRISELDA TORRES
JENNIFER WONG/ATTY. FOR MV.
CONT'D TO 1/24/18 WITHOUT AN ORDER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied.

ORDER: The court will issue the order.

This motion is denied. The motion was originally noticed under LBR 9014-1(f)(1) which requires service 28 days' before the hearing. The

original notice failed to include the new LBR 9014-1(d)(3)(B) language. Movant filed two amended notices of hearing on December 21, 2017 (Doc. No. 43 and 45) to include the new LBR 9014-1(d)(3)(B) language but failed to comply with LBR 9014-1(j) which provides that a continuance of the originally set court date must be made orally at the hearing or in advance of it if made by written application. No order modifying the notice was obtained. Additionally, the order will provide that the hearing set for January 24, 2018 on this motion is vacated.

12. 15-13932-B-7 **IN RE: VICTOR PASNICK**
DBS-1

MOTION FOR COMPENSATION FOR DANIEL B. SPITZER, SPECIAL COUNSEL(S)
12-3-2017 [295]

DANIEL SPITZER/MV
PETER FEAR
DANIEL SPITZER/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondents' defaults will be entered.

Pursuant to the agreement between Movant and the Trustee, Movant will be awarded $12,500.00 in fees and reimbursed $4,735.65 in costs.

13. 17-14036-B-7 **IN RE: SANDRA SANCHEZ STONE**
PPR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
11-29-2017 [13]

MB FINANCIAL BANK/MV
SCOTT LYONS
ALEXANDER MEISSNER/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

The motion will be denied without prejudice. The form and/or content of the notice do not comply with LBR 9014-1(d)(3)(B)(iii).

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at http://www.caeb.circ9.dcn/LocalRules.aspx.

14. 14-11544-B-7 **IN RE: CLIFFORD/ROSLYN BROOKS**
FW-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TAKEDA PHARMACEUTICALS
12-7-2017 [40]

TRUDI MANFREDO/MV
TIMOTHY SPRINGER
PETER FEAR/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

It appears from the moving papers that the trustee has considered the standards of *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987) and *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

a. the probability of success in the litigation;
b. the difficulties, if any, to be encountered in the matter of collection;

c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to FRBP 9019 is a reasonable exercise of the trustee's judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement between the estate and various defendants on the other hand, in a multi-district pharmaceutical litigation. The claims were precipitated by the ingestion of a medication by Mr. Brooks, from which he developed medical issues.

The settlement was reached pursuant to a settlement determination process involving a point system, reviewed by the court presiding over the litigation.

Under the terms of the compromise, the defendants will pay $162,798.57 to the estate, in full satisfaction of the claims. After payment of certain fees associated with the litigation, the trustee expects the estate to net approximately $137.257.47, $53,832.64 from which will be kept separate and held by Trustee without prejudice to any future application by the law firm that represented Mr. Brooks for fees and costs.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Federal Rule of Bankruptcy Procedure 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the defendants have vigorously disclaimed all liability for Debtor's damages; collection will be very easy as the plaintiffs are large corporations which gross billions of dollars annually and the settlement funds are being held by a third-party administrator; the litigation is incredibly complex and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976).

Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be GRANTED.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

15. 16-14150-B-7 **IN RE: MARSHALL LORIMOR**
JTW-2

MOTION FOR COMPENSATION FOR JANZEN, TAMBERI AND WONG, ACCOUNTANT(S)
12-8-2017 [53]

JANZEN, TAMBERI & WONG/MV
JERRY LOWE

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondents' defaults will be entered.

Movant will be awarded $1,120.00 in fees and reimbursed $10.12 in costs.

16. 09-19651-B-7 **IN RE: JACLYN WATKINS**
RHT-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
12-8-2017 [33]

ROBERT HAWKINS/MV
ROBERT HAWKINS/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

17. 17-14151-B-7 **IN RE: KATHRYN NEWSOME**
SW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-13-2017 [15]

ALLY FINANCIAL INC./MV
MARK ZIMMERMAN
ADAM BARASCH/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

The motion will be denied without prejudice. The form and/or content of the notice do not comply with LBR 9014-1(d)(3)(B)(iii).

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at http://www.caeb.circ9.dcn/LocalRules.aspx.

18. 17-13170-B-7 **IN RE: CHRISTOPHER/BRITTANY HILL**
TMT-2

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
12-5-2017 [39]

TRUDI MANFREDO/MV
MARK ZIMMERMAN
TRUDI MANFREDO/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The court authorizes the trustee to employ Gould Auction & Appraisal Company in order to sell personal property of the debtor. The court also authorizes the trustee to pay the auctioneer’s fees and any additional extraordinary expenses of the auctioneer up to $200.00. The court will also waive the 14-day stay under Federal Rule of Bankruptcy Procedure 6004(h).

19. 10-60572-B-7 **IN RE: BOYCE/LINDA WISDOM**
RHT-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BOYCE WISDOM AND LINDA WISDOM
12-8-2017 [40]

ROBERT HAWKINS/MV
ROBERT HAWKINS/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

20. 17-14075-B-7 **IN RE: IRENE WHITE**
JES-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
12-4-2017 [12]

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Conditionally denied.

ORDER: No appearance is necessary. The court will issue the order.

The debtor shall attend the meeting of creditors rescheduled for January 19, 2018 at 9:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor(s) discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

21. 17-13881-B-7 **IN RE: MICHAEL/AMIRA MICHAEL**
BDA-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-5-2017 [26]

BMW BANK OF NORTH AMERICA/MV
HAGOP BEDOYAN
BRET ALLEN/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

The motion will be denied without prejudice. The form and/or content of the notice do not comply with LBR 9014-1(d)(3)(B)(iii).

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at http://www.caeb.circ9.dcn/LocalRules.aspx.

22. 17-14081-B-7 **IN RE: JOSEPH GUILLOZET**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-5-2017 [17]

SANTANDER CONSUMER USA,
INC./MV
ERIC ESCAMILLA
AUSTIN NAGEL/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is uninsured and is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

23. 17-14084-B-7 **IN RE: RILEY TALFORD**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-4-2017 [13]

THE BANK OF NEW YORK MELLON/MV
ERIC ESCAMILLA
JENELLE ARNOLD/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

The motion will be denied without prejudice. The form and/or content of the notice do not comply with LBR 9014-1(d)(3)(B)(iii).

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at http://www.caeb.circ9.dcn/LocalRules.aspx.

24. 15-11288-B-7 **IN RE: FRESNO ACADEMY FOR CIVIC & ENTREPRENEURIAL LEADERSHIP**

TMT-3

OBJECTION TO CLAIM OF YOUNG, MINNEY & CORR, LLP, CLAIM NUMBER 2
11-27-2017 [81]

TRUDI MANFREDO/MV
DAVID JENKINS
GABRIEL WADDELL/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Sustained.

ORDER: No appearance is necessary. The Objecting Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondents' defaults will be entered.

Claim number 2 will be disallowed in its entirety. It appears to be a duplicate of Claim number 5, also filed by Young, Minney & Corr, LLP. While the amounts of the claims differ on the face of the Proof of Claim, the accompanying documentation is identical. The documentation states that the amount owing is $2,977.50 and that if the invoice is paid within 20 days, only $2,963.92 needs to be paid.

25. 11-12793-B-7 **IN RE: JOHN/KATRIEN SAMARIN**
FW-11

MOTION TO AVOID LIEN OF UNION BANK OF CALIFORNIA, N.A.
12-1-2017 [200]

JOHN SAMARIN/MV
PETER FEAR

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondents' defaults will be entered.

A judgment was entered against the debtor in favor of Union Bank of California, N.A. for the sum of $299,295.62 on November 18, 2010. The abstract of judgment was recorded with Fresno County on December 9, 2010. That lien attached to the debtors' interest in several real properties in Fresno, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real properties had an approximate values of $248,400.00, $270,000.00, and $240,000.00 as of the petition date. Docket 109, Amended Schedule C. The unavoidable liens totaled $255,752.92, $272,874.54, and $276,969.04, respectively, on that same date, consisting of a senior deed of trust in favor of CitiMortgage, Inc. on the first property, two senior deeds of trust in favor of Wachovia and Union Bank Real Estate Servicing on the second property, and two senior deeds of trust in favor of CitiMortgage, Inc. Docket 200. The debtor claimed exemptions pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 for each property in Amended Schedule C. Docket 109.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B). This motion is GRANTED.

26. 17-14398-B-7 **IN RE: ELIZABETH/GILBERT GARZA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
11-16-2017 [5]

GILBERT GARZA/MV
GILBERT GARZA/ATTY. FOR MV.
DISMISSED

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: No appearance is necessary. An order dismissing the case has already been entered.

11:00 AM

1. 17-14237-B-7 **IN RE: ADAM RODRIGUEZ**

PRO SE REAFFIRMATION AGREEMENT WITH FLAGSHIP CREDIT CORP.
12-11-2017 [19]

NO RULING.

2. 17-13553-B-7 **IN RE: FAUSTINO/MARIA GARZA**

REAFFIRMATION AGREEMENT WITH PREFERRED CREDIT, INC.
12-4-2017 [15]

TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied.

ORDER: The court will issue an order.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtors' attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtors would be able to make the payments.

3. 17-14077-B-7 **IN RE: LUCERO AVILA**

PRO SE REAFFIRMATION AGREEMENT WITH ALLY BANK
12-7-2017 [21]

NO RULING.

4. 17-13587-B-7 **IN RE: JUAN FLORES**

PRO SE REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK N.A.
12-6-2017 [15]

NO RULING.

5. 17-13296-B-7 **IN RE: LARRY CHAMPAGNE**

REAFFIRMATION AGREEMENT WITH CAB WEST, LLC
12-6-2017 [22]

DAVID JENKINS

FINAL RULING: There will be no hearing on this matter. Debtor's counsel will inform debtors that no appearance is necessary.

DISPOSITION: Denied.

ORDER: The court will issue an order.

The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed August 26, 2017, and the lease was not assumed by the chapter 7 trustee within 60 days, the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to 365(p)(1), the leased property is no longer property of the estate.

1:30 PM

1. 16-10643-B-12 **IN RE: MARK FORREST**
16-1088 DCS-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MARK ALAN FORREST
12-7-2017 [41]

MADRIGAL V. FORREST
DANIEL STEIN/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with the Local Rules.

Local Rule 9014-1(d)(1) requires that "every…motion…shall be comprised of a motion…notice, evidence, and a certificate of service." Local Rule 9014-1(d)(4) requires "each of the documents described in subpart (d)(1) hereof shall be filed as a separate document." The certificate of service was not filed separately as required by LR 9014-1(d)(4), but was filed with the notice.

Local Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing. The original notice, filed on 28 days' notice, did not include this language. Plaintiff filed a "supplemental notice of hearing" on December 28, 2017, which is less than 14 days' notice, in order to add the 9014-1(d)(3)(B)(iii) language. When a matter is set for hearing on 28 days' notice, it must be set in complete compliance with the local rules. Because the supplement was not filed within the 28 days, it was not in compliance with LR 9014-1(d)(3)(B)(iii). Therefore, this motion is DENIED WITHOUT PREJUDICE.

2. 17-10245-B-13 **IN RE: MICHAEL/CAROL LUSK**
17-1016

FURTHER SCHEDULING CONFERENCE RE: AMENDED COMPLAINT
3-10-2017 [12]

PETERSON V. LUSK
HAGOP BEDOYAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. 15-12689-B-7 **IN RE: MARK HANSEN**
17-1042

RESCHEDULED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-12-2017 [31]

HANSEN V. OCWEN LOAN
SERVICING, LLC ET AL
MARK HANSEN/ATTY. FOR PL.

NO RULING.

4. 15-12689-B-7 **IN RE: MARK HANSEN**
17-1042 DCN-5

RESCHEDULED HEARING RE: MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
11-3-2017 [59]

HANSEN V. OCWEN LOAN
SERVICING, LLC ET AL
PETER ISOLA/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

The First Amended Complaint ("FAC," Docket #31) contains these allegations. On May 21, 2004, Plaintiff signed a Promissory Note ("Note") with MortgageIT, Inc. ("MortgageIT") in order to refinance a debt on his residence in Madera County. As security for that loan, Plaintiff also signed a Deed of Trust in favor of MortgageIT. On July 23, 2004, MortgageIT transferred the Note to Merrill Lynch, and Merrill Lynch recorded the deed of trust the following day. Between October 1 and 27, 2004, Merrill Lynch deposited the Note

into the REMIC Trust, where it was "converted into Mortgage Loan Asset-backed Certificates, Series 2004-AA1."

Plaintiff filed a Chapter 13 petition in this bankruptcy court on July 6, 2015, which he voluntarily converted to a chapter 7 on September 22, 2015. He received a Chapter 7 discharge on December 29, 2015.

In April of 2016, Plaintiff began receiving demands for payment from Ocwen Loan Servicing, LLC ("Ocwen") and its subsidiary Western Progressive LLC ("Western Progressive"). On April 26, 2016 an agent of Western Progressive attempted to give Plaintiff notice of a Trustee Sale scheduled for May 18, 2016. On May 11, 2016, Plaintiff filed a motion to reopen his bankruptcy case (Case no. 15-12689, Docket #81), which was granted that same day (Case no. 15-12689, Docket #83). On July 12, 2017, Plaintiff filed this Adversary Proceeding, essentially asking the court to find that he does not owe the defendants any money under the Note and that the Deed of Trust is invalid.

The complaint rambles and is difficult to follow. The crux of plaintiff's claims are that when MortgageIT transferred the Note to Merrill Lynch, plaintiff's obligation to pay back the loan was satisfied and the Deed of Trust became void.

Under Federal Rule of Civil Procedure 12(b)(6) (made applicable by Federal Rule of Bankruptcy Procedure 7012), a court must dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Civil Rule 12(b)(6) dismissal motion, a court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011). However, a court need not accept as true conclusory allegations or legal characterizations cast in the form of factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007); Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). While the court generally must not consider materials outside the complaint, the court may consider exhibits submitted with the complaint. Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987). Additionally, "in determining the propriety of a Rule 12(b)(6) dismissal, a court *may not* look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to dismiss." Broam v. Bogan, 320 F.3d 1023, 1026, FN2 (9th Cir. 2003).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in his complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) quoting Twombly, 550 U.S. at 570 (a claim survives Civil Rule 12(b)(6) when it is "plausible."). It is self-evident that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1121 (9th Cir. 2008).

The plaintiff alleges he is entitled to declaratory relief on several theories: 1.) MortgageIT transferring the Note to Merrill Lynch somehow relieved plaintiff of his obligation to pay under the Note, 2.) the bankruptcy discharge eliminated the debt under the Note, 3.) the Note was not deposited into the REMIC trust as required, therefore the defendants were never in possession of the note, and therefore they have no authority to enforce it, and 4.) the Deed of Trust is void "by operation of law" because he is not liable to defendants under the Note.

In many places, the FAC alleges the following:

> that when MortgageIT transferred the note to Merrill Lynch, "[b]y operation of law, the note…was satisfied" (FAC ¶24) and the "note/mortgage loan transaction agreement by and between Mark R. Hansen and Christina L. Hansen and MortgageIT, Inc. was satisfied as agreed." *Id.* at 27. Plaintiff is informed and believes and thereon alleges that the original Note along with any contractual debt obligation was satisfied by "operation of law" when MortgageIT transferred the Note to Merrill Lynch as Depositor for the REMIC Trust for face value on July 23, 2004, "whereby MortgageIT, Inc. received full compensation on the Note for its role as Originator/credit facilitator." *Id.* at 65.

Plaintiff denies that any security interest in the land was acquired by Defendants through the Deed of Trust. *Id.* at 29.

Plaintiff also alleges that the original Note should have been extinguished by "operation of law" when Merrill Lynch as Depositor to the REMIC Trust allegedly deposited the Note into the REMIC Trust "…no longer existing as a Note under UCC Article 3 – having been converted into 'securities' existing under UCC Article 9 – no longer securing a lien against a specific account/property". *Id.* at 66.

All of these claims are without merit.

First, Plaintiff provides no reason, law, or precedent that the note was satisfied by "operation of law" when MortgageIT transferred the Note to Merrill Lynch. Paragraph 1 of the Note states that the Lender may transfer the Note, and anyone who takes it and who is entitled to receive payments under the Note is called the "Note Holder." *Plaintiff's Exhibit C*, ¶1, Docket #45. Paragraph 3 of the note requires the Plaintiff to make his monthly payments to MortgageIT "or at a different place if required by the Note Holder." *Id.* At ¶3. On page 11 of the Deed of Trust, it states that "The Note or a partial interest in the Note…can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the 'Loan Servicer') that collects Periodic Payments due under the Note and this Security Instrument…" *Plaintiff's Exhibit A*, p.11, ¶20. Indeed, the California Court of Appeals has stated that "a borrower must anticipate [an obligation] can and might be

transferred to another creditor. As to plaintiff, an assignment merely substituted one creditor for another, without changing her obligations under the note." Jenkins v. JPMorgan Chase Bank, N.A., 216 Cal. App. 4th 497, 514-15 (2013), citing Herrera v. Federal National Mortgage Assn., 205 Cal. App. 4th 1495, 1507 (2012). This claim lacks a cognizable legal theory and is therefore not plausible. Because it is not plausible, it must be dismissed without leave to amend.

Second, page three of plaintiff's exhibit "A" (Docket #60) under the paragraphs beginning with "TRANSFER OF RIGHTS IN THE PROPERTY" and "TOGETHER WITH" are provisions that give a security interest to MERS as "nominee for Lender and Lender's successors and assigns." *Plaintiff's Exhibit A*, page 3, Docket #60. The Deed of Trust was assigned to BNYMTC on May 23, 2012 and a Corporate Assignment Deed of Trust for the same property was assigned to BNYMTC on October 31, 2016. *Plaintiff's Exhibits B & C,* Docket #60. These paragraphs are conclusive evidence showing that a security interest was created through the Deed of Trust. This claim lacks a cognizable legal theory and is therefore not plausible. Because it is not plausible, it must be dismissed without leave to amend.

Third, Plaintiff occasionally relies on the Uniform Commercial Code (UCC) to "prove" his points, alleging, for instance, that "securitization" of the Note removed any security interest against a specific property. But "the securitization of a loan does not in fact alter or affect the legal beneficiary's standing to enforce the deed of trust." Nordeen v. Bank of Am. N.A. (In re Nordeen), 495 B.R. 468, 479 (9th Cir. B.A.P. 2013). "[T]he borrower's loan contract…is distinct and separate from any securities transaction in the 'secondary market' encompassing assignment of the contract." *Id.* at 479-80. The Nordeen court stated that "the bankruptcy court did not err in rejecting and dismissing the Nordeens' claims based on their Securitization Theory, and its rulings are consistent with repeated determinations of the district courts sitting in Nevada and Arizona and elsewhere in the Ninth Circuit." *Id.* at 478. This claim lacks a cognizable legal theory and is therefore not plausible. Because it is not plausible, it must be dismissed without leave to amend.

Plaintiff asserts that MERS has no rights to transfer any interest in the deed of trust or to take any action with regard to the deed of trust. FAC, ¶20. The California Court of Appeals has also rejected this argument, finding that

> "the deed of trust…establishes as a factual matter that his claims lack merit. As stated in the deed of trust, Gomes agreed by executing that document that MERS has the authority to initiate a foreclosure. Specifically…'MERS (as nominee for Lender and Lender's successors and assigns) has…the right to foreclose and sell the Property.' The deed of trust contains no suggestion that the lender or its successors and

> assigns must provide [the borrower] with assurances that MERS is authorized to proceed with a foreclosure at the time it is initiated. [The borrower's] agreement that MERS has the authority to foreclose thus precludes him from pursuing a cause of action premised on the allegation that MERS does not have the authority to do so."

Gomes v. Countrywide Home Loans, Inc., 192 Cal. App. 4th 1149, 1157 (Cal. App. Ct. 2011). This claim lacks a cognizable legal theory and is therefore not plausible. Because it is not plausible, it must be dismissed without leave to amend.

Plaintiff's numerous allegations denying that defendants have any right to enforce the note and are not holders of the note, and therefore that foreclosure cannot proceed, have been rejected by the California Court of Appeal. "We…see nothing in the applicable statutes that precludes foreclosure when the foreclosing party does not possess the original promissory note." Debrunner v. Deutsche Bank National Trust Co., 204 Cal. App. 4th 443, 440 (Cal. App. Ct. 2012).

Plaintiff alleges that his bankruptcy discharge included the debt he owed on the Note. He "believes and alleges that any and or all potentially valid claims of debt obligations against Mark Robert Hansen/MARK ROBERT HANSEN, debtor were subject to discharge and were therefore subsequently discharged by operation of law and or by the bankruptcy court and no valid claim of debt or lien against debtor's property survived the bankruptcy discharge." *FAC*, ¶90.

The Supreme Court has unequivocally rejected this claim, holding that "the [Bankruptcy] Code provides that a creditor's right to foreclose on the mortgage survives [or in this case, a Deed of Trust] or passes through the bankruptcy." Johnson v. Home State Bank, 501 U.S. 78, 83 (1991), citing 11 U.S.C. § 522(c)(2), "Unless the case is dismissed, property exempted under this section is not liable…after the case for any debt of the debtor that arose…before the commencement of the case, except secured by a lien…" Plaintiff's debt under the Note is secured by a lien, the Deed of Trust. It is unavoidable in bankruptcy, and therefore survives after a bankruptcy discharge. This claim lacks a cognizable legal theory and is therefore not plausible. Because it is not plausible, it must be dismissed without leave to amend.

Plaintiff does not state what provisions on the FDCPA and CFBP acts Ocwen and Western Progressive violated or how they were violated. Additionally, Plaintiff's harassment claim is based on defendants exercising their legal right to foreclose on Plaintiff's house. Plaintiff has not pled sufficient facts under these theories and so the claims are not plausible. Because they are not plausible, they must be dismissed without leave to amend.

Plaintiff's allegation of the violation of the automatic stay is also without merit. The automatic stay terminates upon the earliest of the case being closed, dismissed, or in a Chapter 7,

when the debtor is discharged. 11 U.S.C. § 362(c)(2). Plaintiff received his discharge on December 29, 2015. The case was closed February 5, 2016 (Case no. 15-12689, Docket #79). Plaintiff alleges that the actions taken by defendants occurred in April of 2016, well after the automatic stay expired. The re-opening of the case on May 11, 2016 changed nothing (Case no. 15-12689, Docket #83). The re-opening of the case does not re-instate the automatic stay. In re Menk, 241 B.R. 896, 911 (9th Cir. BAP, 1999); In re Kvassy, 514 B.R. 307, 314 (C.D. Cal. 2014); In re Franklin, 179 B.R. 913, 925 (Bankr. E.D. Cal., 1995). This claim lacks a cognizable legal theory and is therefore not plausible. Because it is not plausible, it must be dismissed without leave to amend.

Plaintiff denies that his signature appears on the Note, the Deed of Trust, and the Prepayment Rider. This claim was not rebutted in this motion, does have a cognizable legal theory, and is therefore legally plausible.

Therefore, all claims made against the defendants in the First Amended Complaint, EXCEPT for the claim made in paragraph 107, p. 20 of the FAC ("Plaintiff denies that any copies of said Note and or Deed of Trust bear the signature(s) of either the Plaintiff or Plaintiff's spouse") are DISMISSED WITHOUT LEAVE TO AMEND. Plaintiff shall have 14 days from the date of entry of this order granting this motion in part and denying this motion in part to file a second amended complaint, asserting the forgery claim, only, and serve it on the defendants. The motion is GRANTED IN PART and DENIED IN PART.

The court notes plaintiff has made a jury trial demand. The parties are advised to review the provisions of 28 U.S.C. § 157(d) and (e).