

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, January 11, 2017
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS 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 A.M.

1. [15-13503](#)-B-7 JANA RIPIPORTELLA MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
NISSAN MOTOR ACCEPTANCE 11-28-16 [[81](#)]
CORPORATIONS/MV
EDWARD KERNS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

The debtor is an individual. The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by 11 U.S.C. §521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. §362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion.

2. [15-13503](#)-B-7 JANA RIPIPORTELLA MOTION TO PAY
PFT-1 11-30-16 [[87](#)]
PETER FEAR/MV
EDWARD KERNS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. 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. Payment of the subject taxes and any penalties as prayed as an administrative expense is approved.

3. [16-14003](#)-B-7 DARLENE PENA
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
11-29-16 [[9](#)]

ISMAEL RODRIGUEZ/Atty. for dbt.

Debtor's counsel shall notify his client that no appearance is necessary at this hearing. The court will issue a civil minute order.

The debtor shall attend the meeting of creditors rescheduled for February 6, 2017, at 10:00 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 to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

4. [16-10308](#)-B-7 GUADALUPE GUTIERREZ
EAT-2
WELLS FARGO BANK, N.A./MV
DARLENE VIGIL/Atty. for mv.
DISMISSED
REOPENED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-7-16 [[39](#)]

The motion will be granted in part and denied in part without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

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

This case was dismissed on April 18, 2016, for the debtor's failure to appear at his §341 meeting of creditors. The case was reopened to permit the movant to file this motion. The record shows that cause exists to annul the automatic stay, including the weight of the equities, *In re Fjeldsted*, 293 B.R. 12, 24-25 (9th BAP 2003), and the lack of opposition by the debtor. The court notes that the debtor in this case did not list this property located in Lemoore in his schedules and that he resides in Visalia. There is nothing to show that the debtor had any knowledge of the unrecorded grant deed that purported to transfer to him an ownership interest in the subject property.

In light of the relief granted, the motion under 11 U.S.C. §362(d)(4) will be denied because, as the owner of the property, movant is no longer a creditor whose claim is secured by an interest in the Property under § 362(d)(4). See *Ellis v. Yu (In re Ellis)*, 523 B.R. 673, 678-79 (9th Cir. BAP 2014).

The proposed order shall specifically describe the property or action to which the order relates. Because the motion involves a foreclosure of real property in California, the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

5. [16-13921](#)-B-7 CLARA ESQUER
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
11-22-16 [[14](#)]

MARK ZIMMERMAN/Atty. for dbt.

Debtor's counsel shall notify his client that no appearance is necessary at this hearing. The court will issue a civil minute order.

The debtor shall attend the meeting of creditors rescheduled for January 23, 2017, at 8:30 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 to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

6. [16-13734](#)-B-7 JAIME AYALA
JES-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
11-18-16 [[12](#)]

THOMAS GILLIS/Atty. for dbt.

Debtor's counsel shall notify his client that no appearance is necessary at this hearing. The court will issue a civil minute order.

The debtor shall attend the meeting of creditors rescheduled for January 19, 2017, 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 to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

7. [16-12646](#)-B-7 PERRY CROUCH
RJP-3
PERRY CROUCH/MV
RABIN POURNAZARIAN/Atty. for dbt.

MOTION FOR REDEMPTION
11-16-16 [[39](#)]

This motion for redemption will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. 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.

This is the debtor's second attempt to redeem his 2012 Yaris. The prior motion, RJP-2, heard on October 12, 2016, was continued to November 16, 2016, for submission of further evidence that the requirements for redemption had been met. The debtor's initial Statement of Intent, filed within 30 days after the petition or meeting of creditors, listed "Retain the property and continue to make payments" as his intent regarding this property.

On the same day as that hearing, October 12, 2016, the debtor filed an amended Statement of Intention which stated he intended to retain and redeem the Yaris. Even though the statement was filed more than 30 days after the §341 meeting of creditors, it has been held that this requirement is not strictly, that the purpose of the paragraph at the end of

§521(a)(2)(B) "which was 'to make clear that the primary purpose of section 521(a)(2) is one of notice, to remedy creditors' complaints to Congress that they could not reach debtors' attorneys and were not permitted to contact pro se debtors at all. Section 521(a)(2) was not intended to in any way limit the options available to debtors in dealing with secured debts.' 4 Collier on Bankruptcy 706 ¶ 521.14[5], at 521-51 (16th ed.) (2011)." *In re Covel*, 474 B.R. 702 (W.D. Arkansas, 2012).

However, FRBP 1007(b)(2) provides as follows: "Schedules, statements, and other documents required. An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(a) of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be served on the trustee and the creditors named in the statement on or before the filing of the statement. The amended statement was served only on the debtor and the trustee. The debtor did not submit evidence, by November 2, 2016, as required, that an appropriate Statement of Intent was filed and served on the creditor. Accordingly, the motion was denied at the continued hearing. No further evidence was submitted and so the motion was subsequently denied without prejudice.

Subsequently, on November 16, 2016, the debtor filed an amended certificate of service of the Amended Statement of Intention, reflecting an intent to redeem the Yaris, and mailed it to the creditor's post office box. In any case, because the Amended Statement was not directed to an officer, or an agent for service of process, it was not served in compliance with the requirements of FRBP 7004. Moreover, it was not mailed pursuant to the Request for Notice (FRBP 2002) filed by the creditor on July 27, 2016.

Nevertheless, the court will grant the motion to redeem the Yaris for payment of \$3,268. This motion itself was properly served on the party identified as the holder of this claim, both pursuant to FRBP 7004, and pursuant to the Request for Notice. The court agrees that, "[t]he service requirement [of the Statement of Intention] goes beyond the requirements of the statute," which does not contain this provision, the primary purpose of which appears to be to ensure that the trustee and creditor "will have notice of the debtor's intention, so that they may act accordingly." 9 Collier on Bankruptcy, p. 1007-16, ¶ 1007.03[1][b][ii] (16th ed.) (2015).

8. [12-19955](#)-B-7 JOSE/LETICIA NAVARRO
RSB-1
JOSE NAVARRO/MV
R. BELL/Atty. for dbt.

MOTION TO AVOID LIEN OF
SECURITY CREDIT SERVICES LLC
12-13-16 [[22](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. 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. It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

9. [16-13557](#)-B-7 JEFFREY KITCHENS
NLL-1
CITIMORTGAGE, INC./MV
NANCY LEE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-5-16 [[18](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's 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. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5 to the extent that it applies. A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

10. [16-13560](#)-B-7 DANIEL/NICOLE BRYANT
PPR-1
NASA FEDERAL CREDIT UNION/MV
MARIO LANGONE/Atty. for dbt.
BONNI MANTOVANI/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-30-16 [[23](#)]

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

The debtors are individuals. The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by 11 U.S.C. §521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. §362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion.

11. 16-11462-B-7 DWAYNE/MAGDALENA SHARP
EAT-1
OCWEN LOAN SERVICING, LLC/MV
PETER BUNTING/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-13-16 [20]

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be denied as moot as to the debtors because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. No appearance is necessary.

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 proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

12. [15-12564](#)-B-7 PROCESS & PACKAGING MOTION FOR ADMINISTRATIVE
HAR-1 MACHINE CORP. EXPENSES
ROBERT AND KARIN DINAPOLI 12-1-16 [[44](#)]
REVOCABLE LIVING TRUST DATED
RAYMOND ISLEIB/Atty. for dbt.
HILTON RYDER/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. 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. The motion to allow administrative costs will be granted as prayed. The trustee is authorized to pay this administrative claim in his discretion.

13. [16-10769](#)-B-7 EXPRESS COMMODITIES INC MOTION TO PAY
PFT-1 12-9-16 [[29](#)]
PETER FEAR/MV
MARK ZIMMERMAN/Atty. for dbt.
PETER FEAR/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. 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. Payment of the subject taxes as an administrative expense, on a pro rata basis as prayed, will be granted.

14. [16-10284](#)-B-7 YOLANDA ARELLANO
RWR-2

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF COLEMAN &
HOROWITT, LLP FOR RUSSELL W.
REYNOLDS, TRUSTEES ATTORNEY(S)
12-13-16 [[37](#)]

OSCAR SWINTON/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. 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.

11:00 A.M.

1. [16-14109](#)-B-7 MARCOS MUNOZ PRO SE REAFFIRMATION AGREEMENT
WITH FRESNO COUNTY FEDERAL
CREDIT UNION
12-15-16 [[22](#)]

This matter will proceed as scheduled.

2. [16-12910](#)-B-7 PEDRO HERNANDEZ AND
SAMANTHA GARCIA PRO SE REAFFIRMATION AGREEMENT
WITH AMERICREDIT FINANCIAL
SERVICES, INC.
12-21-16 [[20](#)]

THOMAS GILLIS/Atty. for dbt.

The hearing will be dropped from calendar. Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

3. [16-14027](#)-B-7 JOSE/MARIA MARTINEZ PRO SE REAFFIRMATION AGREEMENT
WITH TOYOTA MOTOR CREDIT
CORPORATION
12-15-16 [[16](#)]

This matter will proceed as scheduled.

4. [16-13373](#)-B-7 ESMERALDA CORIES

REAFFIRMATION AGREEMENT WITH
AMERICAN HONDA FINANCE CORP.
12-17-16 [[17](#)]

THOMAS GILLIS/Atty. for dbt.

The hearing will be dropped from calendar. Counsel shall inform his client that no appearance is necessary at this hearing.

Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

5. [16-13373](#)-B-7 ESMERALDA CORIES

REAFFIRMATION AGREEMENT WITH
STERLING JEWELERS INC.
12-8-16 [[14](#)]

THOMAS GILLIS/Atty. for dbt.

The hearing will be dropped from calendar. Counsel shall inform his client that no appearance is necessary at this hearing.

Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

6. [16-12986](#)-B-7 VIOLA ANDERSON

PRO SE REAFFIRMATION AGREEMENT
WITH TRAVIS CREDIT UNION
12-16-16 [[20](#)]

This matter will proceed as scheduled.

1:30 P.M.

1. [16-13210](#)-B-7 RAMIRO TREVINO STATUS CONFERENCE RE: COMPLAINT
[16-1103](#) 11-8-16 [[1](#)]
FRESNO COUNTY FEDERAL CREDIT
UNION V. TREVINO, JR.
RUSSELL REYNOLDS/Atty. for pl.

This matter has been resolved by stipulation of the parties and order of the court. No appearance is necessary.

2. [16-10016](#)-B-13 KEVIN DAVEY MOTION TO DISMISS CAUSE(S) OF
[16-1074](#) EAT-3 ACTION FROM SECOND AMENDED
DAVEY V. OCWEN LOAN SERVICING, COMPLAINT AND/OR MOTION FOR A
LLC ET AL MORE DEFINITE STATEMENT
12-5-16 [[90](#)]
DARLENE VIGIL/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling- Hearing will proceed as scheduled. Motion to Dismiss Count 4 of Second Amended Complaint is DENIED. Motion for a More Definite Statement for Count 4 of the Second Amended Complaint is DENIED. Movant's Request for Judicial Notice is GRANTED, in part and DENIED, in part. Movant to file an Answer to Second Amended Complaint on or before January 25. 2017.

Introduction.

Barrett, Frappier, Treder and Weiss, the foreclosure trustee for a non-judicial foreclosure of plaintiff's property on January 5, 2016 ("Movant"), asks the court to dismiss Count 4 of plaintiff's Second Amended Complaint (SAC) or alternatively for a more definite statement for that Count. Count 4 incorporates the first 47 paragraphs of the SAC and is a claim for injunctive relief relating to alleged actions taken by all the defendants after the trustee's sale.

The court here incorporates its lengthy recitation of the alleged facts and decisional standards for these motions detailed in the minutes of the hearing on Movant's identical motions addressed to plaintiff's first amended complaint entered November 3, 2016. (Doc. 76)

As in the last motion, Movant claims the allegations of count 4 do not establish Movant's involvement in any alleged post-sale activity of the other defendants. Similarly, Movant claims that further details should be alleged in count 4 even if it is not dismissed and thus a more definite statement for that count should be ordered.

Plaintiff opposes Movant's motion, arguing that Count 4 and the SAC contain sufficient allegations "linking" Movant's recording of the Trustee's Deed, in violation of the automatic stay, to the actions leading to eviction proceedings against plaintiff. Plaintiff alleges the Trustee's Deed remains of record and is a continuing stay violation. The recording of the Trustee's Deed, plaintiff contends, was the proximate cause of post-foreclosure eviction proceedings which is also pled in the SAC.

Motion to Dismiss

1. Count 4 alleges sufficient irreparable injury. A request for injunctive relief must allege an irreparable injury and inadequacy of legal remedies. *Beacon Theatres v. Westover*, 359 U.S. 500, 506-07(1959). Losing property at a foreclosure sale can be an irreparable injury. *Sundance Land Corp. v. Community First Savings & Loan Assn.*, 840 F. 2d 653, 661 (9th Cir. 1988). The SAC alleges the loss of real property in paragraphs 17-19 and 23-25, among others. That is sufficient irreparable injury to be a "plausible claim" and survive a motion to dismiss. See, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

2. Count 4 alleges inadequacy of legal remedies. It is beyond cavil that real property is unique and the wrongful loss of that real property is generally not compensable in damages. See, *Foodcomm International v. Barry*, 328 F. 3d 300, 304 (7th Cir. 2003) (legal remedy must be "seriously deficient" as compared to the harm suffered). Paragraph 10 of the SAC (incorporated in Count 4) includes Movant in the charging allegations. Paragraph 13 contains the general agency allegation. Other paragraphs also allege the inadequacy of the legal remedies including: paragraphs 28 (Unlawful Detainer proceedings); 29, 32 (lock out); 33 (service of a new Notice to Quit); 37, 41, 45 (finalizing Trustee's Deed process subject to automatic stay).

3. Nothing in the SAC admits limited involvement by Movant in the process. Movant maintains it was not involved in post-sale proceedings but the plaintiff alleges otherwise. Movant may be factually correct. That is not the standard on a motion to dismiss. The court must accept as true all facts alleged in the complaint and draw reasonable inferences in favor of the plaintiff. *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011).

Motion for a More Definite Statement.

Count 4 is specific enough to apprise Movant of the substance of the claim alleged against it. *San Bernardino Employees Assn. v. Stout*, 946 F. Supp. 790, 794 (C.D., Cal. 1996). As mentioned above, Movant is incorporated in the charging allegations. All of those are incorporated in Count 4. Proof may establish that Movant, in fact, had no involvement in post-sale eviction actions. However, the Plaintiff has also alleged the recordation of the Trustee's Deed in violation of the automatic stay (not yet remedied by Movant) initiated Plaintiff's alleged injury. Movant may not have to remedy that status, but this can only be determined after factual development of this case. That development is not the purpose of a motion for a more definite statement.

Request for Judicial Notice.

Movant asks the court to take judicial notice of certain facts; the facts were, in part, supported by copies of certain recorded documents included with the moving papers. The court rules as follows on each request:

1. Granted.
2. Granted
3. Granted.
4. Denied. Plaintiff admits the fact in paragraph 8 of SAC.
5. Granted.

6. Denied. Plaintiff admits the fact in paragraph 17 of SAC.
7. Denied. When plaintiff's case was filed is disputed. (See FRE 201(b))

3. [15-14225](#)-B-7 LETICIA CAMACHO MOTION FOR ENTRY OF DEFAULT
[16-1084](#) GEG-2 JUDGMENT
CAMACHO V. GARCIA ET AL 12-9-16 [[29](#)]
GLEN GATES/Atty. for mv.

The motion for a default judgment will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed judgment. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. 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.

No damages have been awarded. As requested by the plaintiff, the court will reserve the issue of attorney's fees against the defendants pending a full and final application of fees from bringing this action.

4. [15-14228](#)-B-13 OSCAR GUTIERREZ MOTION FOR ENTRY OF DEFAULT
[16-1085](#) GEG-2 JUDGMENT
GUTIERREZ V. GARCIA ET AL 12-9-16 [[28](#)]
GLEN GATES/Atty. for mv.

The motion for a default judgment will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed judgment. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. 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.

No damages have been awarded. As requested by the plaintiff, the court will reserve the issue of attorney's fees against the defendants pending a full and final application of fees from bringing this action. FRCP 54 (FRBP 7054).

5. [15-10039](#)-B-12 ANGELA PIMENTEL
[16-1086](#)
PIMENTEL V. KENNEDY
DAVID JENKINS/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-25-16 [[1](#)]

**This status conference will be continued to March 1, 2017, at 1:30 p.m.
The court will enter a civil minute order. No appearance is necessary.**

**The defendant shall file and serve a motion addressing the court's
jurisdiction in this matter to be heard on February 15, 2017, at 1:30 p.m.
The motion shall be served and filed by January 18, 2017. Opposition shall
be filed and served by February 1, 2017. Any reply shall be served and
filed by February 8, 2017. At the continued status conference the parties
shall be prepared to address the issue of jurisdiction.**

6. [14-14593](#)-B-7 WAYNE HEAD
[16-1040](#)
FEAR V. HEAD
TRUDI MANFREDO/Atty. for pl.
ORDER #40
CLOSED

PRETRIAL CONFERENCE RE:
COMPLAINT
4-7-16 [[1](#)]

**This matter has been settled by stipulation of the parties and order of the
court. No appearance is necessary.**

7. 16-10016-B-13 KEVIN DAVEY
16-1074
DAVEY V. OCWEN LOAN SERVICING,
LLC ET AL
VINCENT GORSKI/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
11-18-16 [84]

**This matter will proceed as scheduled and will be called with number 2 also
on the 1:30 p.m. calendar.**