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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: STEVEN HARRY LUCORE, SR.  
and JUDY LYNNE LUCORE,  
  
Debtors.

Civil No.: 17cv34-JAH (JLB)  
Bankruptcy No. 13-08534-MM  
Bankruptcy Adversary No. 16-90149-MM

STEVEN HARRY LUCORE, SR., et al.,  
Plaintiffs and Appellants,  
  
v.  
  
U.S. BANK, N.A., AS TRUSTEE, etc., et  
al.,  
  
Defendants and Appellees.

**ORDER (1) DENYING AS MOOT  
DEFENDANTS’ MOTION TO  
DISMISS; (2) GRANTING  
DEFENDANTS’ MOTION FOR A  
LIMITED REMAND; AND (3)  
ORDERING DEFENDANTS TO FILE  
A STATUS REPORT FOLLOWING  
THE BANKRUPTCY COURT’S RE-  
ENTRY OF ITS AMENDED ORDER**

**INTRODUCTION**

This matter comes before the Court on motion to dismiss, or, in the alternative, remand, plaintiffs and appellants Steven Harry Lucore, Sr. and Judy Lynne Lucore’s (“Plaintiffs”) appeal from the United States Bankruptcy Court, filed by defendants and appellees U.S. Bank, N.A., as trustee for the certificate holders of Bank of America Funding Corporation Mortgage Pass-Through Certificates, Series 2006-H; Adam Barasch; and Severson & Werson, a professional corporation (collectively, “Defendants”). See Doc. No. 4.

1 After careful review of the relevant briefs, attached exhibits, and for the reasons set  
2 forth below, the Court (1) **DENIES AS MOOT** Plaintiffs’ motion to dismiss the appeal;  
3 (2) **GRANTS** Defendants’ motion for a limited remand; and (3) **ORDERS** the Defendants  
4 to file a status report, in this Court, no later than fifteen days following the bankruptcy  
5 court’s ruling following remand.

6 **BACKGROUND**<sup>1</sup>

7 On January 9, 2017, Plaintiffs filed notice in this Court appealing from the December  
8 2016 bankruptcy court order dismissing their adversary proceeding against the Defendants.  
9 See Doc. No. 1 at 1-15; Bankruptcy No. 13-08534-MM. Plaintiffs did not prepay the civil  
10 filing fees required by 28 U.S.C. § 1914(a) at the time of filing. Instead, Plaintiffs,  
11 respectively, filed motions for leave to proceed with their appeal in forma pauperis. See  
12 Doc. Nos. 2, 3.

13 On January 13, 2017, Defendants filed a motion to dismiss the appeal for lack of  
14 jurisdiction, due to the pendency of their timely-filed motion to correct or amend the  
15 December 2016 order. See Doc. No. 4 at 3-4 (arguing that, pursuant to Fed. R. Bankr. P.  
16 8002(b)(2), this Court is without jurisdiction to consider the merits of the appeal until  
17 Defendants’ motion to correct is disposed of by the bankruptcy court); *Miller v. Marriott*  
18 *Int’l, Inc.*, 300 F.3d 1061, 1064 (9th Cir. 2002). In the alternative, Defendants request that  
19 this Court remand the matter to remove any doubt regarding the jurisdiction of the  
20 bankruptcy court to correct its own order. See Doc. No. 6 at 4-6.

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24 <sup>1</sup> Defendants asks the Court to take judicial notice of four documents attached to its  
25 motion to dismiss as Exhibits 1-4. See Doc. Nos. 4-3 - 4-7. Exhibits 1-4 are various rulings  
26 by the Honorable Margaret M. Mann, United States Bankruptcy Judge, issued in Plaintiffs’  
27 underlying bankruptcy case. *Id.* Because Exhibits 1-4 are publicly recorded and accessible  
28 whose accuracy cannot be reasonably questioned, this Court deems it appropriate to take  
judicial notice of Exhibits 1-4. See Fed. R. Evid. 201(b); *Anderson v. Holder*, 673 F.3d  
1089, 1094, n.1 (9th Cir. 2012); *Caldwell v. Caldwell*, 2006 WL 618511, \*4 (N.D. Cal.,  
2006).

1 On February 22, 2017, Defendants filed a supplemental brief informing this Court  
2 that Judge Mann held a hearing on Defendants’ motion to correct, and ruled in their favor.  
3 See Doc. No. 6. Indeed, Judge Mann concluded that the bankruptcy court had jurisdiction  
4 to enter a corrected order, despite the pendency of this appeal. See Doc. No. 6-1. The  
5 bankruptcy court then entered an amended order dismissing the adversary proceeding  
6 against the Defendants. See Doc. No. 6-2. In light of this development, Defendants  
7 withdrew their request to dismiss the appeal, acknowledging that “a final order has been  
8 entered and this appeal is ripe for determination.” See Doc. No. 6 at 2. Here, the Court  
9 agrees that the appeal is now ripe for determination, and, therefore, **DENIES AS MOOT**  
10 Defendants motion to dismiss on the basis of this Court lacking jurisdiction to hear the  
11 appeal.

12 Defendants nevertheless maintain their request for a limited remand to ensure that the  
13 entry of the corrected order was with jurisdiction. See *id.* (citing *Huey v. Teledyne, Inc.*,  
14 608 F.2d 1234, 1237 (9th Cir. 1979)). Here, the Court finds good cause to grant a limited  
15 remand. The docket indicates that the appellate record has not yet been perfected, opening  
16 briefs have not been filed, and no party will be unduly prejudiced by a limited remand,  
17 which would remove any doubt surrounding entry of the amended order and jurisdiction.

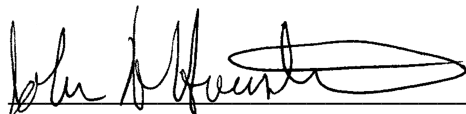
18 Accordingly, **IT IS HEREBY ORDERED** that:

- 19 1. Defendants’ motion to dismiss this appeal on the basis of this Court lacking  
20 jurisdiction is **DENIED AS MOOT**;
- 21 2. Defendants’ motion for a limited remand to re-enter its amended order is  
22 **GRANTED**; and
- 23 3. Defendants shall file a status report, in this Court, no later than fifteen days  
24 following the bankruptcy court’s ruling following remand.

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**IT IS SO ORDERED.**

DATED: September 21, 2017



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JOHN A. HOUSTON  
United States District Judge

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