UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 23, 2024 at 1:30 p.m.

1.	**24-20884-E-13** **HRH-2**	**RAKESH/BALJIT BAINS** **Mark Wolff**	**MOTION FOR RELIEF FROM AUTOMATIC STAY** **4-3-24 [50]**

BMO BANK N.A. VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 3, 2024. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, xxxxxxx.

The Motion for Relief from the Automatic Stay is granted.

BMO Bank N.A. f/k/a BMO Harris Bank N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2023 Great Dane 53' Dry Van, VIN 1GR1A0623PB514486 ("Trailer"). The moving party has provided the Declaration of Bryan J. Schrepel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Rakesh Kumar Bains and Baljit Kaur Bains ("Debtor"). Decl., Docket 52.

Debtor and Movant entered into a written Loan and Security Agreement on or about May 6, 2022. *Id.* at 2:1-5. Movant argues Debtor defaulted on the terms of the Loan and Security Agreement, on or about May 6, 2023 by failing to make the monthly installments then due. *Id.* at 2:13-14. As of March 8, 2024, the balance due under the agreement was the sum of $69,099.68. *Id.* at 2:15-17. Movant states that no post-petition payments have been made. *Id.* at 2:18-19. Debtors indicated their intention to surrender the trailer by listing it in Class 3 of their Plan. *Id.* at 2:20-22.

Movant argues that the Trailer is depreciating as each day passes, which only increases Movant's potential losses. Decl., Docket 52, p. 2:26-27. Movant thus requests that the automatic stay should be lifted "for cause" as Debtor is not on title to the trailer, Debtor and the Estate have no interest in the Trailer, Debtor is not paying for the trailer, and Debtor intends to surrender it.

David P. Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on April 9, 2024. Docket 57. Trustee asserts that where Debtor provides for the surrender of the Trailer, Trustee does not oppose the motion. *Id.* at 2:5-6.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $69,099.68 (Declaration, Dckt. 52, p. 2:15-17), while the value of the Trailer is determined to be $21,000.00 as stated in Schedules A/B and D filed by Debtor. Schedule A/B, Docket 16, line 3.14.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay because Debtor and the Estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in Trailer when the liens against the Trailer exceed the Trailer's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in Trailer, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick ("the Chapter 13 Trustee"), the court determines that there is no equity in the Trailer for either Debtor or the Estate, and the Trailer is not necessary for any effective rehabilitation in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Trailer, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, because the Debtor is not on title to the trailer, Debtor and Estate have no interest in the trailer, Debtor is not paying for the trailer, and Debtor intends to surrender the trailer, that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by BMO Bank N.A. f/k/a BMO Harris Bank N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Trailer, under its security agreement, loan documents granting it a lien in the asset identified as a 2023 Great Dane 53' Dry Van, VIN 1GR1A0623PB514486 ("Trailer"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Trailer to the obligation secured thereby.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Rakesh Kumar Bains and Baljit Kaur Bains ("Debtor"), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

2.	**22-23246-E-13** **WSS-1**	**TAMANY RESOVICH** **Matthew Gilbert**	**CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **3-1-24 [47]**

DAVID DRADER VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 1, 2024. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is xxxxxxx.

April 23, 2024 Hearing

The hearing was continued so that Tamany Resovich ("Debtor") could document the cure payments on their default to Creditor. Creditor would dismiss this Motion if the default was cured, or at the continued hearing address the asserted default and how this case can proceed.

On April 18, 2024, Mary Drader and David Drader's ("Movant") attorney submitted his own Declaration testifying that as of April 15, 2024, a balance of $310.45 was still owing on the default. Decl., Docket 76 ¶ 3.

At the hearing, **xxxxxxx**.

REVIEW OF THE MOTION

Movant seeks relief from the automatic stay with respect to Debtor's real property commonly known as 5001 Bonanza Auto Road, Shingle Springs, California 95682 ("Property"). Movant has provided the Declaration of David Drader to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made 10 post-petition payments, with a total of $8,870.00 in post-petition payments past due. Declaration, Docket 49, ¶ 9. Debtor has also not paid the property taxes on the Property that were due on December 11, 2023. *Id.* at ¶ 10. Movant also states that the Property is worth $200,000.00. *Id.* at ¶ 11. Movant's Motion also states that this Property is not necessary for the Debtor's reorganization. Motion, Docket 47, ¶ 13. Furthermore, Movant states that because Debtor is not providing adequate protection payments, their position is getting worse each month. *Id.* at ¶ 14. For these reasons, Movant asks the court to grant an order for relief from the automatic stay. *Id.*

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 26, 2024. Opposition, Docket 61. Debtor asserts that they have already paid a majority of the delinquency and will pay the remaining balance prior to the Hearing. *Id.* at p. 2:4-6. Debtor also states that there is approximately $273,325.00 of equity in the Property, which gives the Movant a 68% equity cushion. *Id.* at p.2:7-14. Additionally, Debtor claims that this Property is absolutely necessary for the effect reorganization of the Debtor's estate because he operates two businesses on the Property. *Id.* at p.2:21-28.

Debtor submits a Declaration in support of the Opposition. Decl., Docket 63. Debtor states in his Declaration that he operates a bookkeeping business and an egg production business on the Property. *Id.* at p. 2:10-13. A large part of his income from the bookkeeping business comes during the tax season. *Id.* at p. 2:15-23. The income he has received so far this year has been favorable, and it has allowed him to correct his delinquency with the Movant. *Id.* Debtor states that he has paid Movant $7,096.00 on March 26, 2024. *Id.* at p. 2:24-28. He also states that he had been trying to make payment earlier, but that the Zelle information he had for Movant was not valid. *Id.* Debtor expects to pay $3,152.48 to Movant on March 29, 2024 which will cure the delinquency, and he expects to pay the property taxes on the property by April 5, 2024. Debtor also states that the Property is worth $400,000.00 which means there is $273,325.00 in equity. *Id.* at p. 3:17-19.

MOVANT'S REPLY

Movant filed a Reply to Debtor's Opposition on April 2, 2024. Docket 65. Movant states it has received some money but is still owed $801.93 for March 2024 and $887.33 for April 2024. *Id.* at ¶ 5. Movant states the equity cushion does not matter for purposes of this Motion; the Motion should be granted for failing to comply with the Plan and Debtor's inability to make payments under the Plan. *Id.* at ¶¶ 7-8.

DISCUSSION

11 U.S.C. § 362(d)(1): Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

In this case, Movant claims that Debtor has not made any plan payments since the Plan was confirmed on May 5, 2023. Motion, Docket 47, ¶ 7-9. However, Debtor has shown that they have paid $7,096.00 to Movant on March 26, 2024 and Debtor has submitted a transaction receipt as evidence. Exhibit A, Docket 62. Debtor states that the remaining balance of $3,152.48 owed to Movant will be paid by March 29, 2024, and that the Property taxes will be paid by April 5, 2024. Debtor is making payments on Movant's Claim and explains that the payments are late because the Zelle information for Movant was incorrect. Exhibit B, Docket 61 p. 3.

Overview of Chapter 13 Case

Debtor commenced in this Bankruptcy Case on December 14, 2022, approximately fifteen monthly prior to the hearing on this Motion. The court's records do not show Debtor having filed a prior bankruptcy case in this District.

Debtor's Confirmed Chapter 13 Plan (Dckt. 3) requires Debtor to make monthly plan payments of $1,180.00 for a period of sixty (60) months. Movant has two claims provided for in the Plan. One is a class 2 claim for ($12,000), Plan, § 3.07, for which Movant is to be paid $200.00 a month.

A second secured claim is provided for in Class 4 (which is for claims for which there is not a default), that Debtor is paying directly with monthly payments of $877. Plan, § 3.10.

Movant has filed two proofs of claim in this Case. Proof of Claim 12-1 asserts a $12,000 secured claim as being for "delinquent property taxes." Given that Movant is not the tax collector, it appears that Movant has advanced monies (Movant makes a reference to a receipt for the taxes) to pay the taxes and is asserting that the failure to repay the taxes is a default on Debtor's obligation to Movant. Movant asserts the right to recovering these monies is based on the deed of trust which secures Movant's claim.

Movant's second Proof of Claim 12-1, is for a $21,025.00 amount which is stat4ed to be for "delinquent installment payments. Movant states in Proof of Claim 12-1 that there is a promissory note for this obligation and it has been "Perfected" by a document stated to be "Invoice #A." POC 12-1 § 9.

Attached to Proof of Claim 12-1 is a Document titled "Promissory note for Down-Payment Loan." POC 12-1, p. 4-6. The Note states that the sum of $19,000 is owed, with there to be four equal annual payments of $5,459.76 each, which includes 7% interest. Note, introductory paragraph and ¶ 1. The Note is dated October 22, 2013. The final payment is to be in November 2017.

The Note states it is secured by a deed of trust by property in El Dorado County (the property not identified) and a financing statement on a mobile home.

No copy of the deed of trust or the filed financing statement are included with Proof of Claim 12-1.

It appears that both of these obligations came due and were in default prior to the filing of this Bankruptcy Case.

On Schedule D Debtors lists Movant has a claim in the amount of ($127,719), and that it is secured by a Deed of Trust encumbering the real property commonly known as 5001 Bonanza Auto Rd, Shingle Springs, California. Schedule D; Dckt. 1 at 22.

Debtor then lists Movant as having a claim for $12,000, which is disputed, that is secured by a Deed of Trust against the same property.

Documents Filed with Motion for Relief

Movant provides a copy of the recorded Deed of Trust, which was recorded in El Dorado County, California on October 29, 2013. Exhibit B; Dckt. 52 at 8. The Motion for Relief states that there is owing $136,938.75 owing on the Note, which includes a $2,460.14 advance for property taxes. Motion, ¶ 12; Dckt. 47. These amounts are not consistent with the Proof of Claim filed by Movant under penalty of perjury.

11 U.S.C. § 362(d)(1): Deny Relief Because of Equity Cushion

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][I] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

Here, Movant claims that the Property is worth $200,000.00. Decl., Docket 49, ¶ 11. Movant also claims that the amount Movant would be required to pay to ensure its rights in the Property totals $136,938.75. Motion, Docket 47, ¶ 12. Movant offers absolutely no independent evidence as to why the Property should be valued at $200,000. No valuation reports, no images of the home, no market analysis, nothing of the kind is submitted. Instead, the only evidence offered is one line stating, "it is my opinion that the Property is worth $200,000." Decl., Docket 49, ¶ 11. The court is not inclined to value the collateral based off this testimony.

Debtor scheduled the Property at $300,000 when the case was filed in 2022. Schedule A, Docket 1 p. 11 line 1.1. Movant has not given any reason why the Property has dropped a $100,000 in value. Such an assertion appears completely without merit.

Debtor claims that the Property is worth $400,000.00. Decl., Docket 63, p. 3:17-19. Debtor likewise does not submit evidence as to the Property's valuation, but says a simple online search should reveal it's value is between $400,000-$500,000. *Id.* at p. 3:15-16.

CONFUSION OVER CREDITOR'S CLAIM(s)
AND THE SECURITY DOCUMENTS

At the hearing, the court addressed with the respective counsel how many separate claims the Creditor may have, or is it actually just one claim. Creditor filed her proofs of claim without the assistance of counsel and no lien documents are provided. Creditor merely stated that a lien existed because of an invoice. It is not clear that there is actually a Class 4 secured claim.

At the hearing, Debtor's counsel reported that the cure payments have been/are being made as of the April 9, 2024 hearing. Debtor and Creditor's counsel agreed to a continuance so that Debtor could document the cure, and then Creditor would dismiss this Motion, or at the continued hearing address the asserted default and how this case can proceed.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Mary Drader and David Drader ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief from the Automatic Stay is **XXXXXXX**.

3. 23-24568-E-13 RDW-2

SUNDREA GORDON-HACKLEY
Carl R. Gustafson

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 3-12-24 [39]

ROGER E. LARSEN, TRUSTEE OF THE LARSEN FAMILY TRUST ET AL. VS.

THIS MATTER WILL BE HEARD AT THE START OF THE 2:00 P.M. CALENDAR IN CONJUNCTION WITH THE DEBTOR'S MOTION TO SELL PROPERTY

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 12, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay / Motion for Adequate Protection was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, Debtor stated opposition on the record.

The Motion for Relief from the Automatic Stay is denied without prejudice, the court having granted Debtor's Motion to Sell at Docket Control Number CRG-4.

April 23, 2024 Hearing

This Hearing was continued in order for Debtor to file and serve Opposition pleadings on or before April 11, 2024, and Replies, if any, to be filed and served before April 18, 2024.

Debtor filed Opposition on April 11, 2024. Docket 68.

DEBTOR'S OPPOSITION

Debtor asserts:

1. The stay should remain in place because Debtor seeks to sell the real property located at 948 Lake Canyon Avenue, Galt, California 95632 in order to fund her plan. *Id.* at 2:17-19.

2. Debtor filed an Amended Plan on April 10, 2024, detailing the terms of sale. Docket 60.

3. Thus, the stay is necessary to effective reorganization. Opposition, Docket 68, 2:19-20.

4. Debtor has taken significant steps to sell the Property as set forth in Debtor's Motion to Sell Real Property (Docket 61) and expects the sale will proceed quickly. Furthermore, Debtor filed an ex parte Motion to Shorten Time on April 10, 2024, and expects to have her Motion to Sell Real Property heard on the same day of as the continued Motion for Relief from Stay (April 23, 2024). Opposition, Docket 68, 2:21-25.

5. The stay should remain in place because Debtor has taken steps to sell the Property, having entered into an agreement for the sale of the Property on April 8, 2024 (Exhibit, Docket 63, Exhibit A), contingent on the Court's approval. Opposition, Docket 68, 2:26-3:2.

6. Debtor has equity in the Property as evidenced by the Agreement. Exhibit, Docket 63, Exhibit A.

7. Movant has adequate protection based on the short terms of the sale agreement in the short time frame in the amended plan's additional provisions, and the equity of the property. Opposition, Docket 68, 3:4-5.

CREDITOR'S REPLY

Creditor filed a Reply on April 18, 2024, stating that the Motion for Relief should be granted because Debtor is not making any payments to Creditor pending the sale of the Property. Docket 78, p. 3:6-15.

An Order Shortening Time for Service (Docket 70) was entered on April 11, 2024. A hearing on the Motion to Sell Real Property is set for this same date, April 23, 2024 but at 2:00 PM. Any opposition to the granting of the relief sought in the Motion or the time allowed for services of the Motion, may be raised at the hearing. *Id.* at 2:6-8.

At the hearing, **XXXXXXX.**

REVIEW OF THE MOTION

Roger E. Larsen and Elizabeth E. Larsen, Trustees of the Larsen Family Trust dated March 15, 2006 as to an undivided 55.804% interest and Mark Belotz and Silvia Belotz, also known as Marta Silvia Belotz, as trustees of the Belotz Family 1999 Trust, as Amended & Restated in 2014, dated July 6, 1999 as to an undivided 44.196% interest, its successors and/or assignees ("Movant," "Creditor") seeks relief from the automatic stay, or, in the alternative, adequate protection payments, with respect to Sundrea Danyelle Gordon-Hackley's ("Debtor") real property commonly known as 948 Lake Canyon Avenue, Galt, California 95632 ("Property"). Movant has provided the Declarations of Reilly D. Wilkinson and Rich Mendoza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Dockets 41, 42.

Movant argues Debtor has not made three post-petition payments, with a total of $12,558.33 in post-petition payments past due. Declaration, Dckt. 42 ¶ 9. Movant also provides evidence that there is a pre-petition arrearage of $26,393.23. *Id*. The total amount now owed on the loan is $487,986.46. *Id*. at ¶ 10.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $486,737.46 (*Id*.; the amount of debt less asserted attorney's fees), while the value of the Property is determined to be $624,900 as stated in Schedules A/B and D filed by Debtor. Schedule A/B, Docket 1 p. 10 line 1.1.

At the hearing, Debtor stated an opposition to the Motion, citing to a change in income and Debtor's recognition that this property must be sold, Debtor no longer being able to cure the defaults.

Initially, Debtor stated that she was soliciting only cash offers and seeking to have them close in the next week or two. These cash offers were stated to be in the $525,000 range.

Movant argued that with a $525,000 gross sales price and deducting 5% for commission and costs of sale, there was only a meager $20,000 equity cushion and Movant was at grave risk.

As the court noted at the hearing, these quick sale cash offers were likely from bottom feeders who were looking at making a quick profit by selling the property in a commercially reasonable manner (not a quick close cash sale).

The court also pointed out that the Debtor is the fiduciary of the Bankruptcy Case and that she must dispose of property in a commercially reasonable manner, not just dumping it at a substantially lower price then fair market value.

In the Motion for Relief From the Stay, Movant stated grounds for relief from the automatic stay for cause (11 U.S.C. § 362(d)(1)) and did not assert a value of the Property securing Movant's claim. Movant's first ground is stated with "particularity" as a failure to make some payments, and then instructed the court to read the Declaration of Rich Mendoza to identify the payments that Movant would want to assert.

In the Declaration, testimony is provided that the obligation is based on a Note for which there were ($26,393.23) in pre-petition defaults and ($12,558.33) in post-petition arrearages. Dec., ¶ 9; Dckt. 42. The Declaration also correctly cites to, and provides as an exhibit, the Chapter 13 Trustee's post-petition payment history, showing no Plan payments having been made by Debtor in this Case.

On Schedule A/B Debtor states that the $624,900 valuation is based on that shown on the Zillow.com website. Going to that website on March 27, 2024, it states a value of $650,000. [Fn.1.] The Zillow website (which the court does not take as evidence) states that this is a four bedroom, three bath house, which is 2,159 square feet in size. Additionally, it sits on a 6,534 square foot lot.

FN. 1. https://www.zillow.com/homes/948-Lake-Canyon-Avenue,-Galt,-California-_rb/25955387_zpid/

Based on the cash, quick sale offers, it appears that the value of this Property may be closer to $625,000 if sold in a commercially reasonable, non-fire sale, manner. It appears that Movant have a substantial, almost six-figure equity cushion protecting it.

The Debtor recognizing the financial inability to keep the property and now stating that Debtor will proceed with a commercially reasonable prompt sale of the property, does state an opposition to the Motion. Debtor also will immediately proceed with an amended plan and motion to confirm that is build around the commercially reasonable prompt sale.

Additionally, as the court noted at the hearing, though the tentative ruling denied the Movant's request for waiving the fourteen day stay of enforcement of an order granting relief from the stay (if merely being added to the prayer for relief, with no grounds for such relief stated), when continuing a hearing like this for opposition, the court generally will waive the fourteen day stay of enforcement (without requiring an amendment to the Motion). Thus, any dely cause by the court considering the merits of the Motion and Opposition is greatly reduced for Movant.

As provided in Local Bankruptcy Rule 9014-1(f)(2), the court continues the hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on April 23, 2024.

Debtor shall file and serve Opposition pleadings on or before April 11, 2024, and Relies thereto, if any, shall be filed and served on or before April 18, 2024.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Roger E. Larsen and Elizabeth E. Larsen, Trustees of the Larsen Family Trust dated March 15, 2006 as to an undivided 55.804% interest and Mark Belotz and Silvia Belotz, also known as Marta Silvia Belotz, as trustees of the Belotz Family 1999 Trust, as Amended & Restated in 2014, dated July 6, 1999 as to an undivided 44.196% interest, its successors and/or assignees ("Movant," "Creditor"), having been presented to the court, the Motion having been filed and notice given pursuant to Local Bankruptcy

Rule 9014-1(f)(2), oral opposition having been stated at the initial hearing, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is denied without prejudice, the court having granted Debtor's Motion to Sell at Docket Control Number CRG-4.

4. 24-21070-E-13 THOMAS MEADOWS Pro Se

OBJECTION TO CERTIFICATION BY A DEBTOR WHO RESIDES AS A TENANT OF RESIDENTIAL PROPERTY 4-9-24 [26]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court is to set the hearing on an Objection to this Certification within ten days after the Certification was filed. 11 U.S.C. § 362(l)(3)(A). However, here, Creditor set the Hearing for April 23, 2024, and the court acquiesced to this later date. Debtor and the Chapter 13 Trustee were served on April 9, 2024. 14 days' notice was provided.

Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ---------------------------------.

The Objection to Certification by a Debtor who Resides as a Tenant of Residential Real Property is sustained.

Pursuant to 11 U.S.C. §§ 362(b)(22) and (l), Thomas Meadows ("Debtor") filed a Certification with the court testifying under penalty of perjury that:

> a) Under the state or other nonbankruptcy law that applies to the judgment for possession (eviction judgment), [Debtor has] the right to stay in [his] residence by paying [his] landlord the entire delinquent amount, and
>
> b) [Debtor has] given the bankruptcy court clerk a deposit for the rent that would be due during the 30 days after [he filed] the Voluntary Petition for Individuals Filing for Bankruptcy (Official Form 101).

Docket 16. The lessor, North Village Development, Inc. ("Objector") has objected to this Certification. Docket 26.

Pursuant to 11 U.S.C. § 362(b)(22), the automatic stay of 11 U.S.C. § 362(a) does not go into effect:

> [S]ubject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor.

11 U.S.C. § 362(b)(22). However, 11 U.S.C. § 362(b)(22) is subject to § (l), which states:

> (1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—
>
>> (A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and
>>
>> (B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.
>
> (2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).
>
> (3)
>
>> (A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.
>>
>> (B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

11 U.S.C. § 362(l) is clear that Debtor must submit the Certification on the same date the petition was filed and also properly serve the lessor such certification. The record shows the case was filed on March 19, 2024, and the Certification was not filed until April 9, 2024, in direct violation of 11 U.S.C. § 362(l). Moreover, Objector has objected on the grounds that Debtor has not complied with 11 U.S.C. § 362(l)(A) and (B). *See* Decl., Docket 27. The court's records show that debtor has tendered a payment of $6.75, which is far too low to be the amount required to pay rent due within 30 days after filing the petition. Lessor further Objects on the basis that Debtor is not permitted under nonbankruptcy law to cure the entire monetary default because Debtor was never a party to the lease agreement and is unlawfully residing on the premises. *Id.* at ¶ 9.

Importantly, 11 U.S.C. § 362(b)(22) immediately goes into effect and Objector "shall not be required to enable the lessor to complete the process to recover full possession of the property." 11 U.S.C. § 362(b)(22) can only go into effect, however, if the judgment for the unlawful detainer was obtained *before* the filing of the bankruptcy petition. Here, the judgment was obtained on March 21, 2024, two days after this case was filed on March 19, 2024, meaning 11 U.S.C. § 362(b)(22) cannot go into effect.

Lessor has filed a Motion for Relief from Stay (DCN.: JCT-4) seeking to modify, annul, or terminate the automatic stay. Questions surrounding the automatic stay will be discussed in that Motion.

Therefore, the Objection is sustained as Debtor has not complied with the requirements of 11 U.S.C. § 362(l).

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Objection to Certification by a Debtor who Resides as a Tenant of Residential Real Property filed by North Village Development, Inc. ("Objector"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained and the Certifications made by Debtor in the Initial Statement About an Eviction Judgment Against You (Dckt. 16) are not true.

5. **24-21070-E-13** **THOMAS MEADOWS** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
JCT-4 **Pro Se** **4-9-24 [29]**

NORTH VILLAGE DEVELOPMENT, INC. VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on April 9, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------------------------------**.

The Motion for Relief from the Automatic Stay is granted, and the automatic stay is modified ~~retroactively as of March 19, 2024~~, to allow Movant to proceed with eviction proceedings pursuant to the state court Judgment for Possession obtained March 21, 2024 in the Superior Court of Solano County, case no. CL23-04132.

Movant seeks relief from the automatic stay with respect to the real property commonly known as 300 Crescent Drive, Apartment 241, Vacaville, Solano County, California ("Property"). Movant requested and received relief from the stay regarding this same Property on February 28, 2024 (Dockets 62, 75 in case no. 23-24350) in Thomas Meadows' ("Debtor's") ongoing Chapter 7 case, case no. 23-24350. However, Movant did not request prospective relief from stay in that Motion under 11 U.S.C. § 362(d)(4), meaning the automatic stay went into effect as to the Property upon Debtor's second bankruptcy filing, this instant case. Movant requests the court terminate or annul the automatic stay to allow Movant to proceed with the unlawful detainer and eviction.

The moving party has provided the Declaration of Bobbie Sloan to introduce evidence as a basis for Movant's contention that Debtor does not have an ownership interest in or a right to maintain possession of the Property. Exhibit E, Sloan Decl., Docket 31 p. 26. Movant presents authenticated evidence that it is the owner of the Property and that Debtor does not have an interest in the Property. Exhibit A, Lease Contract, Docket 31.

Movant explains that Debtor is not a party to the Lease Contract. Exhibit E, Sloan Decl., Docket 31 ¶ 3. Rather, the parties on the lease were Sharon Calalang and Movant. *Id.* Movant filed and won an unlawful detainer action against Ms. Calalang for not paying rent, and when Ms. Calalang attempted to return possession to Movant, Debtor prevented Movant from obtaining possession by unlawfully living in the Property. *Id.* at ¶¶ 6-8. Debtor has not paid any rent monies whatsoever. *Id.* at ¶ 6.

After this court granted relief from stay as to the Property in Debtor's Chapter 7 case, a Judgment for Possession of the Property was ordered by the Superior Court for Solano County on March 21, 2024, and a Writ of Possession was issued by that same court on March 26, 2024. *Id.* at ¶ 9. Debtor still refused to vacate the Property. *Id.*

Concurrent Filings, Annulment of the Stay

As the court noted, this instant case (no. 24-21070) was filed on March 19, 2024, while Debtor's Chapter 7 case is still open and ongoing (no. 23-24350). The instant case appears it was filed without any attempt by Debtor to prosecute in good faith. There are no Schedules or Plan filed at all in the Current Chapter 13 Case. The Chapter 13 Trustee has filed a Motion to Dismiss, stating Debtor should have prosecuted case no. 23-24350 if Debtor was serious about obtaining legitimate relief in bankruptcy. Docket 21 ¶ 1. This fact is further evidenced by there being a Motion to Dismiss also in case no. 23-24350, Debtor failing to appear at the 341 Meeting. Case no. 23-24350, Docket 80. The instant filing appears to be a nothing more than tool to halt the eviction judgment, which is an abuse of the bankruptcy system.

The court found nothing in the Bankruptcy Code or Fed. R. Bankr. P. that either permitted or prohibited two simultaneous pending voluntary bankruptcy cases concerning the exact same Debtor. *See In re Giles*, 641 B.R. 255, 258 (S.D. Fla. 2022). Bankruptcy courts have developed case law on what is called the "single estate rule." *Id.* at p. 259; *In re Grimes*, 117 B.R. 531, 536 (B.A.P. 9th Cir. 1990) (holding that "a debtor who has been granted a discharge under one chapter under Title 11 may file a subsequent petition under another chapter even though the first case remains open, as long as the debtor meets the requirements for filing the second petition."). The single estate rule establishes that when property is already a part of one bankruptcy estate, a second, simultaneous case involving the same debtor would violate the single estate rule because property of the first estate cannot also be property of the second bankruptcy estate. However, the single estate rule is not implicated if a discharge has been entered in the first case. *Grimes*, 117 B.R. at 536.

Violation of the single estate rule has been a bad-faith grounds for dismissal in other Circuits that have explored the issue, with most Circuits citing to the Supreme Court case *Freshman v. Atkins*, 269 U.S. 121 (1925). *See In re Borg*, 105 B.R. 56, 58 (Bankr.D.Mont.1989); *In re Smith*, 85 B.R. 872, 874 (Bankr.W.D.Okla.1988); *In re Belmore*, 68 B.R. 889, 891 (Bankr.M.D.Pa.1987); *Prudential Ins. Co. of America v. Colony Square, Co.*, 40 B.R. 603, 605 (Bankr.N.D.Ga.1984); *In re Stahl, Asano, Shigetomi & Associates*, 7 B.R. 181, 186 (Bankr.D.Hawaii 1980). The court will consider violations of the single estate rule in the Chapter 13 Trustee's Motion to Dismiss in this case, Docket Control Number DPC-1 and the effect of two cases ongoing simultaneously where no discharge has been entered in the first case.

With the filing of this instant case came a new automatic stay that came into effect on March 19, 2024. 11 U.S.C. § 362(a). The Judgment for Possession of the Property and corresponding Writ of Execution came after this date, which would normally result in a violation of the automatic stay, unless this court grants retroactive relief. The Ninth Circuit recognizes the bankruptcy court's wide discretion in granting relief from the automatic stay, including granting "retroactive relief from the stay." *In re National Environmental Waste Corp.*, 129 F.3d 1052, 1053 (9th Cir. 1997). Annulment of the automatic stay, retroactive relief, should be granted in considering, "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.* at 1055. The court should engage in balancing the equities when considering retroactive relief. *Id.*

Here, retroactive relief is warranted. Debtor has filed the instant case while he has an ongoing Chapter 7 Case pending with no discharge entered. This filing is not being prosecuted in good faith as Debtor has not complied with Chapter 13 filing requirements, there being no Schedules or Plan on the Docket. Not granting retroactive relief would result in wasting more resources while also allowing Debtor to wrongfully thwart this court's prior order for relief from the automatic stay regarding the same Property in case no. 23-24350. The court finds, in balancing the equities, retroactive relief is warranted.

Based upon the evidence submitted, the court determines that there is no right to possession in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating, annulling, and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant's grounds for the request are that, "Debtor has no lease or other agreement permitting Debtor to be in possession of the [Property]. Debtor obtained possession of the [Property] by fraud and Debtor is not making any monthly rental payments. . . Debtor obtained possession by remaining in possession of the Property after the lawful tenant vacated. . ." Motion, Docket 29 p. 6:7-10.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by North Village Development, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated and ~~annulled retroactively to March 19, 2024 (the date this current Bankruptcy Case was filed while Debtor's Chapter 7 case was still pending with no discharged entered)~~ to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 300 Crescent Drive, Apartment 241, Vacaville, Solano County, California ("Property"). ~~The State Court Judgment for Possession (Case no. CL23-04132) obtained on March 21, 2024, and subsequent Writ of Execution obtained on March 26, 2024, are valid and in full effect given the court annulling the automatic stay back to the March 19, 2024 filing of this Bankruptcy Case), and Movant can proceed with the eviction proceedings.~~

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

6. 24-20297-E-13 | **LORELL LEAL** Pro Se | **MOTION FOR SPECIAL POWER OF ATTORNEY** 3-28-24 [26]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Debtor, in *pro se*, filed her first Motion for Special Power of Attorney on March 1, 2024. Docket 15. This court entered an Order setting the hearing on this matter for March 12, 2024 at 1:30 p.m. Docket 16. Neither Debtor nor her attorney in fact, Lisa Schlein, appeared at the March 12 Hearing and instead filed a second Motion for Special Power of Attorney on March 28, 2024. Docket 26. The court issued an Order on April 11, 2024, setting the Hearing for April 23, 2024 at 1:30 p.m. and ordering Debtor and her Attorney in Fact to appear.

Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, no appearance was made by Debtor.

The Motion for Special Power of Attorney is xxxxxxx.

Lorell Leal ("Debtor") moved the court to grant her attorney-in-fact, Lisa Schlein, power of attorney to act on Debtor's behalf in her bankruptcy case. With her Motion, Debtor submits unauthenticated Exhibits showing that Ms. Schlein has been authorized to act as attorney-in-fact. Docket 26 ps. 2-3. Debtor informs the court that she truly is sick and unable to prosecute the case on her own behalf. She states:

1. Debtor has chronic physical ailments, such as chronic obstructive pulmonary disease ("COPD"), migraines, and gastrointestinal disease that lead to vomiting, weakness, breathing difficulty, anxiety and panic.

2. It would be unfair to all involved to have frequent or prolonged absences or continually rescheduling due to physical health limitations.

3. For these reasons, Debtor respectfully requests the Motion be granted to allow for assistance or substitution, and to otherwise act on Debtor's behalf, if, and as needed, or may be necessitated from time to time during the

> course of the case, including carrying out the duties and responsibilities as debtor in this case.

Docket 26 p. 1. With this Motion, Debtor submits Exhibits showing she has had Covid-19, and informing the court of some complications related to COPD.

Fed. R. Bankr. P. 9010, titled "Representation and Appearances; Powers of Attorney," states,

> (a) Authority To Act Personally or by Attorney. A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.
>
> (b) Notice of Appearance. An attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record.
>
> **(c) Power of Attorney**. The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. §459, §953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.

There is no "granting" of a power of attorney by the court. If the debtor seeks to have another person to have a power of attorney and act in the name of the debtor (rather than the debtor) in a case, the debtor may do so. But a power of attorney is not a device to create "multiple debtor entities" in a bankruptcy case.

While a power of attorney may allow a person other than the debtor appear in the case rather than the debtor, it does not allow the person who receives the power of attorney to act as the debtor's attorney. For someone participating in federal court to appear, the recipient must be represented by a licensed attorney. *See* 10 Collier on Bankruptcy ¶ 9010.02, which states:

> A party may also appear through an authorized agent, attorney in fact, or proxy. However, these entities cannot perform any act that would constitute the unauthorized practice of law.

If a debtor (or other party in a federal court case) is not legally competent to participate in such proceeding, then Federal Rule of Civil Procedure 25(b) and Federal Rules of Bankruptcy Procedure 7025 and 1016, which provides:

> Rule 1016. Death or Incompetency of Debtor
>
> Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded

> in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

It may be that this Debtor, acting in *pro se*, is working to prosecute this case in a clear and transparent manner.

Remarks from the Court's Order
Dated April 11, 2024

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. 380, 384 (Bankr. E.D. Cal. 1991).

From the Prior *Ex Parte* Motion and current *Ex Parte* Motion, the court interprets the relief requested to be as provided in Federal Rule of Bankruptcy Procedure 1016 and 2025, and Federal Rule of Civil Procedure 25 to substitute Lisa Schlein in as the personal representative for Debtor Lisa Schlein, with Lisa Schlein, the personal representative, real party in interest, of the Debtor.

Alternative Prosecution Pursuant to
Power of Attorney

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, a representative of a debtor may file a bankruptcy petition for an incompetent person. Federal Rule of Bankruptcy Procedure 1004.1 was enacted to bring the Federal Rule of Civil Procedure 17 provisions relating to a personal representative to engage in District Court litigation in the name of the person who has granted the authority to the representative.

Thus, it may be that the relief requested is to designate Lisa Schlein, pursuant to the power of attorney, as the person who "filed this Case and is prosecuting this Case in the place of the Debtor personally." As noted by several courts, when a power of attorney is used in such a way, the court must take steps to scrutinize the facts and circumstances (as do the U.S. Trustee and Trustee) to prevent abuse and ensure that the Debtor is aware of the proceedings. *See, In re Spurlin*, 664 F.3d 954, 959 (5th Cir. 2011); and *In re Matthews*, 516 B.R. 99 (Bankr. N.D. Tex. 2014).

Personal Representative or Successor Representative
Must be Represented by Counsel

Whether the court appoints a successor representative due to Debtor being legally incompetent (due to her physical disabilities) or designate Lisa Schlein, holder of the Special Power of Attorney, as the person who is the person who is exercising Debtor's rights and responsibilities in the prosecution of this case, Lisa Schlein must be represented by an attorney.

A power of attorney or appointment as a successor representative does not make Lisa Schlein the Debtor, nor authorize her to represent the Debtor in place of an attorney. This is well-established law, which includes *The People ex rel. v. Malone et al.*, 232 Cal. App. 2d 531, 536-537 (1965).

> An attorney in fact is thus defined in 2 Corpus Juris Secundum, Agency, section 4, page 1037: "An attorney in fact is one who is given authority by his principal to do a particular act not of a legal character. The term 'attorney in fact' is, in loose language, used to include agents of all kinds, but in its strict legal sense it means an agent having a special authority created by deed."
>
> . . .
>
> In 3 American Jurisprudence Second, Agency, section 23, page 433, the basic conceptions of attorney at law and attorney in fact are thus contrasted: "... the person holding a power of attorney is known and designated as an 'attorney in fact,' thus distinguishing such person from an attorney at law."
>
> (2) A power of attorney does not permit an agent to act as an attorney at law. If the rule were otherwise, the State *537 Bar Act could be relegated to contempt by any layman who secured from his principal an ordinary power of attorney, for the purpose of representing him in pending litigation.
>
> (3, 4) An attorney at law is different from an attorney in fact by definition and by general customary treatment; Carroll Malone had no right whatsoever to act as attorney for his absent brother. This fact alone requires us to say that we cannot uphold the judgment as to Paul T. Malone. The short sentence appearing in Campbell v. Jewish Committee for Personal Service, 125 Cal.App.2d 771, at page 772 [271 P.2d 185] is appropriate: "Not being a lawyer, Campbell cannot appear as attorney for his brother."

This was more recently discussed by the Bankruptcy Appellate Panel for the Ninth Circuit in *Foster v. Sligar* (*In re Foster*), 2012 Bankr. LEXIS 5779, *15-18 (B.A.P. 9th Cir. 2012), which includes:

> The leading California case on this issue is *Drake v. Superior Court*, 21 Cal.App.4th 1826, 26 Cal.Rptr.2d 829 (Cal.Ct.App.1994). . . The California Court of Appeals disagreed [with the holder of the power of attorney asserting that he could prosecute litigation in exercising the powers and rights given in the power of attorney], noting that the unlicensed practice of law is categorically prohibited in California, and the Power of Attorney Act did not provide an exception to this rule:
>
> > Long before passage of the Power of Attorney Act, the law distinguished between an attorney in fact and an attorney at law and emphasized that a power of attorney is not a vehicle which authorizes an attorney in fact to act as an attorney at law. If the rule were otherwise, the State Bar Act could be relegated to contempt by any layman who secured from his principal an ordinary power of attorney, for the purpose of representing him in pending litigation.

Id. (internal citations and quotations omitted). Therefore, the court concluded, Drake could not "use the statutory form power of attorney as a device to practice law for his principal." *Id.* at 832–33. *See In re Marriage of Caballero*, 27 Cal.App.4th 1139, 33 Cal.Rptr.2d 46, 52 (Cal.Ct.App.1994)("Despite broad statutory language of the power of attorney with respect to claims and litigation, the attorney in fact may not act as an attorney at law on behalf of his principal, even though the principal could appear in propria persona...."). *See Ryan v. Hyden*, 2012 WL 4793116 (S.D.Cal. Oct.9, 2012)(nonlawyer son with power of attorney for parents could not draft pleadings and pursue claims on their behalf as it constituted the unauthorized practice of law under California law; complaint dismissed); *Lomax*, 2011 WL 4345057, at *3–4 (uninjured father acting as attorney-in-fact for injured son lacked standing to bring complaint on behalf of son and other family members for their injuries; power of attorney did not permit father to engage in the unauthorized practice of law; motion to dismiss complaint granted); *Hughes v. Laguna Honda Hosp.*, 2000 U.S. Dist. LEXIS 10855 (N.D.Cal. Aug. 1, 2000)(daughter with power of attorney for mother authorizing her to act on mother's behalf regarding "claims and litigation" did not allow daughter to sign and file complaint for mother's claims on her behalf; complaint dismissed without prejudice); 6A Cal. Jur.3d, Attorneys at Law § 135 (3d ed.2012) (one may not act as an attorney for another by virtue of a special power of attorney; power of attorney is not a vehicle for acting as an attorney at law).

Chapter 13 Plan

On March 5, 2024, Debtor filed an Amended Plan. Dckt. 17. No Motion to Confirm, with Notice of Hearing and supporting evidence, has been filed. Reviewing Schedule I, Debtor lists having substantial monthly income, of which approximately 40 percent are contributions by household members. It appears that Debtor has substantial monthly income to fund a Plan, prosecute this case, and cure the pre-petition default on her home mortgage.

The Bankruptcy Plan makes provisions for only paying the one secured claim for which there is a default to be cured.

Debtor filed an Amended Plan on April 16, 2024, with payments as follows: $4,404.63 for three months, $5,513.07 for 54 months, and $6,621.51 for three months. Docket 35 § 2.01. General unsecured claims will receive a 0% dividend.

Objection to Exemptions

On April 2, 2024, the Chapter 13 Trustee filed an Objection to the Exemptions that Debtor has claimed in this Case. Dckt. 27. The objections are based on Debtor having failed to cite statutory provisions for the exemptions and that Debtor has failed to state the amount claimed as exempt (having just checked the box for "100% of fair market value up to the amount of the exemption"), which is not the method for claiming exemptions under applicable California Law. For the Statutory Basis Debtor only stated "Exemption Set 1 704." Schedule C; Dckt. 1 at 21. California Civil Code § 704 was repealed in 1983.

Review of Schedules

On Schedules D and E/F, the Debtor lists only one creditor, that being the one holding the secured claim to be cured through the Chapter 13 Plan.

On Schedule A/B Debtor lists the property securing the claim as having a value of $500,000, but that Debtor's interest has a value of only $150,000. Dckt. 1 at 11. Debtor states that at least one other person has an interest in this property. *Id.*

On Schedule D Debtor lists the creditor having a lien on the property as having a secured claim of only ($65,271.50). Id. at 23. However, in the Amended Plan, § 3.07, (Dckt. 17) Debtor states that there is a $65,271.50 pre-petition arrearage to be cured and there are still regular monthly payments of ($4,189.46) going forward, which indicates that the debt secured by the Property is much greater.

Proof of Claim 3-1 has been filed by NewRez LLC d/b/a Shellpoint Mortgage Servicing for Citibank, N.A., as trustee of the New Residential Mortgage Loan Trust 2019.4. The total amount of the claim is ($455,090.91), for which there is stated to be an arrearage of ($67,169.42).

If Debtor values the Property at $500,000.00 and asserts her interest in the property has a value of $150,000, then Debtor's interest appears to be approximately 30%.

Debtor filed Amended Schedule C on April 19. 2024. Docket 38.

At the hearing, **XXXXXXX**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Special Power of Attorney having been presented to the court, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

FINAL RULINGS

7. 20-25615-E-13 FI-1 | **KARIN JOHNSON-ANDERSON Fred A. Ihejirika** | **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY 3-19-24 [23]**

KARIN JOHNSON-ANDERSON VS.

Final Ruling: No appearance at the April 23, 2024 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

Karin Eileen Johnson-Anderson ("Movant," "Debtor") seeks relief from the automatic stay to allow a Dissolution of Marriage Case, later amended to a Petition for Legal Separation of Marriage, case no. 20FL03445 (the "State Court Litigation"), to be concluded. Movant has provided the Declaration of Debtor to introduce evidence to authenticate the documents.

Movant argues that argues that this relief is needed because, in Debtor's confirmed Chapter 13 Plan, all property of the bankruptcy estate vests in Debtor upon confirmation. Declaration, Docket 25 ¶ 5. The Plan was confirmed on April 9, 2021. Order, Docket 18. On May 24, 2021 Debtor and her non-filing spouse Marcus Louis Anderson ("NF-Spouse," "Co-Debtor") executed a Marital Settlement Agreement which awards all or virtually all of the marital property, which is also property of the bankruptcy estate, to Debtor. *Id.* at ¶ 7. Debtor requests relief from the automatic stay and co-debtor stay of 11 U.S.C. § 1301

to allow this state Court Litigation to proceed and the division of marital property can be completed. *Id.* at ¶ 10.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a non-opposition on April 9, 2024. Docket 28.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The authenticated Exhibits show a separation agreement has been entered into by both debtor and NF-Spouse, and so relief is warranted to allow the consensual dissolution of marital property to proceed. Exhibit 3, Docket 26 ps. 14-15. Therefore, judicial economy dictates that the State Court Litigation be allowed to continue.

Co-Debtor Stay

To the extent the co-debtor stay applies here, Debtor has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Typically, a creditor brings the Motion for Relief from the co-debtor stay pursuant to 11 U.S.C. § 1301(a). It appears that Debtor could indeed be a creditor of co-debtor to the extent of debtor's interest in the marital property. Therefore, Debtor has established, pursuant to 11 U.S.C. § 1301(a), that she would be irreparably harmed if relief from the co-debtor stay were not granted because Debtor would be unable to rightfully obtain the marital property. 11 U.S.C. § 1301(c)(3).

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Karin Eileen Johnson-Anderson ("Movant," "Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Karin Eileen Johnson-Anderson to allow Debtor, her agents, representatives and successors, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in the Dissolution of Marriage Case, later amended to a Petition for Legal Separation of Marriage, case no. 20FL03445.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of Marcus Louis Anderson ("NF-Spouse," "Co-Debtor") of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.

8. 18-26341-E-13 NLG-1 **TIMOTHY MUNN** **Richard Jare**

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY 3-20-24 [35]

DEBTOR DISMISSED: 03/22/24
NATIONS DIRECT MORTGAGE, LLC VS.

Final Ruling: No appearance at the April 23, 2024 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 20, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

Nations Direct Mortgage, LLC ("Movant") seeks relief from the automatic stay with respect to Timothy Munn's ("Debtor") real property commonly known as 8536 Ria Formosa Way, Elk Grove, CA 95757 ("Property"). Movant has provided the Declaration of Jodi Reisch to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on March 22, 2024, for failing to make plan payments. Dckt. 42.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) ***the time the case is dismissed***; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) ***revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.***

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of March 22, 2024, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on March 22, 2024.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Nations Direct Mortgage, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice as moot, this bankruptcy case having been dismissed on March 22, 2024 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Timothy Munn ("Debtor") and Candace Munn ("Co-Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 8536 Ria Formosa Way, Elk Grove, CA 95757, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the March 22, 2024 dismissal of this bankruptcy case.