UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 21, 2024 at 1:30 p.m.

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1. 23-24065-E-13 HAW-3 | **MICHAEL MASTROMATTEO** **Helga White** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **4-8-24 [67]**

MICHAEL MASTROMATTEO VS.

THE HEARING ON THIS MOTION SHALL BE CONDUCTED AT 2:00 P.M. ON MAY 21, 2024 IN CONJUNCTION WITH RELATED MOTIONS ON THAT 2:00 CALENDAR

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—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 and parties in interest, parties requesting special notice, and Office of the United States Trustee on April 8, 2024. By the court's calculation, 43 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 Motion for Relief from the Automatic Stay is granted.

Debtor in this case and Movant here, Michael Mastromatteo ("Movant") seeks relief from the automatic stay to allow a Dissolution of Marriage Petition and the division of assets to continue. The action was filed with the Placer County Superior Court in October 2020, Case No. S-DR-0059399 (the "State Court Litigation"). Movant has provided his own Declaration to introduce evidence to authenticate the documents upon which he bases the claim.

Movant argues that relief is appropriate here as the State Court Litigation has been ongoing and hotly contested for almost four years, and there is another hearing in that matter coming up on May 7, 2024. Declaration, Dckt. 69 ¶ 3. Movant requests relief to allow a separation of property and the dissolution of marriage to continue in state court. *Id.* at ¶ 8.

The Chapter 13 Trustee, David Cusick ("Trustee") filed a nonopposition on May 6, 2024. Docket 82.

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).

Here, the court is presented with the Debtor seeking to wrap up a divorce in family law proceedings, including the respective rights of the spouses to a property division. The Motion expressly states that the Bankruptcy Court retains jurisdiction relating to the distribution of such property in this Bankruptcy Case.

Exceptions to Automatic Stay

Congress provides in 11 U.S.C. § 362(b) specific exceptions from the automatic stay, which include:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

. . .

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

. . .

11 U.S.C. § 362(b)(2)(A), (B), (C).

This recognizes the special nature of some state court proceedings and federal court's generally exercising discretion and not delve into family law or probate proceedings in general, but focus on how they interplay with Federal Law.

The court, as well as the practitioners now before the court, recognizes that the Bankruptcy Code allows for the federal bankruptcy judge to clearly provide whether the stay is applicable or not with respect to a state court proceeding, and not merely leave the state court judge to having to delve into the intricacies of Bankruptcy Law.

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The issues appear to have been mostly litigated already, and the Placer County Superior Court is better situated with the facts of the case to render the best judgment here. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

As expressly noted by the Movant, such relief does not include allowing for the State Court to "take over" administration of property of the Bankruptcy Estate or provide for distributions of property of the Bankruptcy Estate outside of Bankruptcy Law.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, Trustee, or property of the bankruptcy estate.

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 Michael Mastromatteo ("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 modified as applicable to Michael Mastromatteo, Movant, to allow Movant to proceed with litigation in the Placer County Superior Court, Case No. S-DR-0059399, for the conclusion of obtaining a final judgment for dissolution of the marriage with Susan Kingsbury, address custody and support issues, address other personal family issues as part of the dissolution proceedings, and make a property division order/judgment, which is subject to this court exercising exclusive jurisdiction (28 U.S.C. § 1334(e)) over all property of the Bankruptcy Estate and all property of the Debtor.
>
> **IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to any property of the Bankruptcy Estate and property of the Debtor, for which this Bankruptcy Court has exclusive jurisdiction pursuant to 28 U.S.C. § 1334(e), or enforcement of any judgment against Debtor, David Cusick, the Chapter 13 Trustee, or property of the bankruptcy estate.
>
> Any judgment or order for the division of property, determining whether property that is or could be property of the Bankruptcy Estate or the Debtor is separate or community property, the granting of property division, or other determination of property rights and interest, is not effective in determining whether property is property of the Debtor or the Bankruptcy Estate during the marriage and prior to the final decree of dissolution of the marriage. The property division judgment or other order determining community property, separate property, or division of assets will be considered by the Bankruptcy Court as to how property is to be disbursed upon completion or dismissal of the Bankruptcy Case, as well as the application of other legal principles such as marshaling of assets.
>
> If the entry of an order or judgment for determination of the rights and interests in specific property prior to the completion of this Bankruptcy Case or

dismissal of this Bankruptcy Case, relief may be sought in a supplemental motion for further relief from the automatic stay and for this court to abstain from determining such ownership or property division issues. Such supplemental motion shall specifically identify the property that will be the subject of such state court proceedings.

No other or additional relief is granted.

2. **24-21569-E-13 CJC-99** **LA KRISHA KING** **Pro Se** **MOTION FOR RELIEF FROM AUTOMATIC STAY** **4-22-24 [9]**

DEBTOR DISMISSED: 05/06/24
THR CALIFORNIA L.P. 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 not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on April 22, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **xxxxxxx**

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 denied without prejudice, the automatic stay having been terminated by dismissal of this bankruptcy case.

THR California L.P., a Delaware Limited Partnership ("Movant") seeks relief from the automatic stay with respect to La Krisha King's ("Debtor") real property commonly known as 3824 Innovator Drive, Sacramento, Ca ("Property"). Movant has provided the Declaration of Melissa Youngblood 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 May 6, 2024, for Debtor failing to timely file documents. Dckt. 20.

On May 6, 2024 the Chapter 13 Trustee, David Cusick ("Trustee"), filed a nonopposition, also noting the Certificate of Service form error. Docket 21.

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 May 6, 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 May 6, 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 THR California L.P., a Delaware Limited Partnership ("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 May 6, 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 La Krisha King ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 3824 Innovator Drive, Sacramento, Ca, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the May 6, 2024 dismissal of this bankruptcy case.

3. 24-21070-E-13 DPC-1 | **THOMAS MEADOWS** | **CONTINUED MOTION TO DISMISS CASE**
Pro Se | **4-5-24 [21]**

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 Office of the United States Trustee on April 5, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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.

The hearing on the Motion to Dismiss is xxxxxxx.

May 21, 2024 Hearing

The court continued this hearing from the May 1, 2024 dismissal calendar because at the April 23, 2024 hearing Debtor stated an intention to prosecute a Chapter 13 case and was considering seeking the assistance of counsel. A review of the Docket on May 16, 2024 reveals that Debtor has not yet submitted evidence of obtaining counsel.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Thomas Meadows ("Debtor"), filed the instant Chapter 13 case while he has an open Chapter 7 case ongoing (case no. 23-24350). That

case was a Chapter 13 case and was converted to one under Chapter 7. If Debtor was serious about reorganizing, Debtor could have prosecuted case no. 23-24350. Docket 21 ¶ 1.

2. Debtor has filed a Form 101A "Initial Statement of Eviction Judgment" at Docket 16, but Debtor likely committed perjury when he submitted this document as the information submitted was untrue or incorrect. *Id.* at ¶ 2.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 23.

DISCUSSION

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 a Plan filed at all in the current Chapter 13 Case. The Chapter 13 Trustee has filed this 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).

Here, the court finds the instant filing to violate the single estate rule as Debtor has not received a discharge in the open Chapter 7 Case, no. 23-24350. It cannot be that assets of that bankruptcy estate can simultaneously be assets of this current Chapter 13 case, as *Grimes* instructs, without a discharge entered in the open Chapter 7. *See also In re Berg*, 45 B.R. 899, 903 (B.A.P. 9th Cir. 1984) (holding "[t]he [Bankruptcy] Act and [Bankruptcy] Code estates are two separate and distinct entities which are exclusive of one another. [Debtor's] property cannot be an asset of both estates simultaneously.").

May 1, 2024 Hearing

Debtor did not attend the hearing on the Motion to Dismiss which was set for hearing pursuant to Local Bankruptcy Rule 9014(f)(2), for which no written opposition is required.

The court recently conducted on April 23, 2024, hearings in this Chapter 13 Case addressing the Motion for Relief from the Stay by which the property owner asserting an unlawful detainer action against Debtor was given relief from the Stay and an Objection to Debtor's Lease Certification. Debtor also has his prior bankruptcy case, which has been converted to one under Chapter 7 set for a hearing on the Motion to Dismiss due to Debtor's failure to attend the 341 Creditors Meeting in the Chapter 7 Case. Case No. 23-24350.

At the April 23, 2024 hearing Debtor stated an intention to prosecute a Chapter 13 case and was considering seeking the assistance of counsel.

To afford any confusion on Debtor's part about this Motion to Dismiss, the court continues the hearing to 1:30 p.m. on May 21, 2024 (specially set day and time). This continuance is different then the ruling stated on the record a the May 1, 2024 hearing on this Motion to Dismiss.

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 hearing on the Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee") was conducted by the court.
>
> **IT IS ORDERED** that the Motion to Dismiss is **xxxxxxx**.

4. 24-20485-E-13 CAS-1 HARVINDER SINGH AND KULDIP KAUR Paul Bains MOTION FOR RELIEF FROM AUTOMATIC STAY 4-19-24 [30]

ALLY BANK 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, parties requesting special notice, and Office of the United States Trustee on April 19, 2024. By the court's calculation, 32 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 granted.

Ally Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2021 Chevrolet Tahoe Z71 Sport Utility 4D, VIN ending in 0912 ("Vehicle"). On January 6, Movant repossessed the Vehicle. Mot., Docket 30 ¶ 7. The moving party has provided the Declaration of Paul Tangen to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Harvinder Jeet Singh and Kuldip Kaur ("Debtor").

Movant argues Debtor has not made a contractual payment since January 19, 2023. Declaration, Dckt. 33 ¶ 4. Movant provides testimony it is owed $11,366.59 for missed prepetition payments, and $2,161.88 for missed postpetition payments. *Id*.

David Cusick, the Chapter 13 Trustee ("Trustee"), filed a nonopposition on May 6, 2024. Docket 43. Trustee notes Debtor does not provide for Movant in the proposed Plan or Schedules, requesting the Motion be granted.

Kelley Blue Book or NADA Valuation Report Provided

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. Exhibit C, Docket 34 p. 14. The Report has been properly authenticated and is accepted as a market report

or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DEBTOR'S RESPONSE

Debtor filed a Response on May 6, 2024. Dckt. 45. Debtor asserts that they do not oppose lifting the automatic stay as to the Vehicle as Debtor has already surrendered the Vehicle and does not wish to provide for Movant's Claim. *Id.* at ps. 1:25-2:2. However, Debtor notes that Movant stated in its Motion that Debtor owes a debt of $57,647.11 to Movant. Debtor argues this is impossible as Debtor filed a case under Chapter 7 on March 27, 2023 Case No.: 23-20949, which resulted in Debtor being granted a discharge on July 6, 2023. *Id.* at p. 1:22-24. *See* Case No.: 23-20949, Docket 37. Movant was scheduled in that case.

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 $57,647.11 (Declaration, Dckt. 33 ¶ 5), while the value of the Vehicle is determined to be $58,250, as stated on the Kelley Blue Book Valuation Report.

Debtor rightfully argues that their personal liability on the retail installment agreement has been discharged by virtue of Debtor receiving a discharge in their prior case under Chapter 7. 11 U.S.C. § 524(a); 4 COLLIER ON BANKRUPTCY ¶ 524.02 (stating "Section 524(a) ensures that a discharge will be completely effective and will operate as an injunction against the commencement or continuation of an action or the employment of process to collect or recover a debt as a personal liability of the debtor. Thus, it protects the debtor from a subsequent suit in a state court, or any other act to collect, by a creditor whose claim had been discharged in the title 11 case.").

However, a discharge only ends the personal liability as to the individual Debtor, and a discharge does not erase the debt itself. 11 U.S.C. § 524(e); 4 COLLIER ON BANKRUPTCY ¶ 524.05 (stating "[s]ubsection (e) of section 524 makes clear that, except as provided in section 524(a)(3) for certain debts in community property states, the discharge in no way affects the liability of any other entity, or the property of any other entity, for the discharged debt.").

At the hearing, **xxxxxxx**

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, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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 Vehicle, 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.

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, because the value of the Vehicle continues to decline, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot., Docket 30 ¶ 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 Ally Bank ("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 Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2021 Chevrolet Tahoe Z71 Sport Utility 4D, VIN ending in 0912 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **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.

5.	**20-22499-E-13 DPC-4**	**EDGAR/DULIAMARIA AGUILAR Paul Bains**	**CONTINUED MOTION TO DISMISS CASE 3-8-24 [88]**

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 8, 2024. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The hearing on the Motion to Dismiss is xxxxxxx.

May 21, 2024 Hearing

The court continued this hearing from the May 1, 2024 dismissal calendar because Counsel for the debtor, Edgar Eduardo Aguilar and Duliamaria Aguilar ("Debtor") reported that certain potential medical bills may have been causing the Debtor to hold back on making Plan payments. The court addressed with both counsel for the Debtor and counsel for the Trustee the possibility that the Debtor set up automatic EFT payments each month, and the parties establish a procedure for communication if the Debtor is going to cancel the automatic payments and advise the Trustee how such default will be promptly addressed. Counsel for the Trustee concurred with the Debtor's request for a short continuance.

At the hearing, xxxxxxx

REVIEW OF THE MOTION

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Edgar Eduardo Aguilar and Duliamaria Aguilar ("Debtor"), is delinquent $9,309.99 in plan payments. Debtor will need to have paid $18,620.21 to become current by the hearing date. Docket 88 p. 1:17-23.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 90.

DEBTOR'S RESPONSE

Debtor filed a Response on April 17, 2024. Docket 92. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is $9,309.99 delinquent in plan payments, which represents multiple months of the $4,655.11 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has stated the delinquency will be cured prior to the Hearing. As of the court's review of the Docket on April 25, 2024, no such evidence of any cure has been submitted. At the hearing, counsel for the Debtor reported that the delinquency has been cured, with the last payment having been sent to the Trustee.

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 Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Dismiss is **xxxxxxx**.

FINAL RULINGS

6. 22-23246-E-13 KPC-1 | **TAMANY RESOVICH** | **Matthew J. Gilbert** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** | **4-12-24 [70]**

ROCKY TOP RENTALS, LLC VS.

Final Ruling: No appearance at the May 21, 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, parties requesting special notice, and Office of the United States Trustee on April 12, 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). 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.

Rocky Top Rentals, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as Tamany Resovich's ("Debtor") interest in a portable storage unit. Specifically, Debtor and Movant executed a Rental Purchase Agreement and Disclosure Statement on October 20, 2018. Movant states that the agreement constitutes a lease in the portable storage building located at 5001 Bonanza Auto Shingle Springs, Eldorado, Ca 95682 ("Property"). The moving party has provided the Declaration of Marquis Summers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation. Decl., Docket 72.

Movant asserts the lease expired prepetition under its natural terms. *Id.* at ¶ 5. Debtor defaulted under the terms of the lease prepetition. Debtor was to make monthly payments of $378.58 on the 15 day of each month for 36 months, but Debtor defaulted on the April 15, 2020 payment, and all subsequent payments. *Id.* at ¶ 6. The lease is in default in the total amount of $5,333.29. *Id.* Attached to the

Declaration, Movant includes a copy of the Rental Purchase Agreement and Disclosure Statement as well as a chart showing debtor's delinquency. Exhibits 1 & 2, Docket 72.

Movant seeks, pursuant to 11 U.S.C. § 365(p), that the court confirm the lease of the Property has been rejected by Debtor, and so the Property is not subject to the automatic stay. In the alternative, Movant seeks an order granting relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (2).

On May 7, 2024, David Cusick, the Chapter 13 Trustee ("Trustee"), filed a nonopposition. Docket 82. Trustee states that Debtor does not provide for Movant in the confirmed Plan or Schedules, so relief should be granted.

Property that is the Subject of the Rental/Purchase Agreement

The Motion identifies as the leased property as being "a portable storage building . . . located at 5001 Bonanza Auto Shingle Springs, Eldorado, CA." Motion, p. 2:19-25; Dckt. 70. Debtor lists her address as being "5001 Bonanza Auto Rd, Shingle Springs, CA." Petition, ¶ 5; Dckt. 1. It appears that Movant was attempting to state Debtor's address as where the "portable storage unit" is located.

In the Motion Movant states that the "Lease" identified by Movant is actually a Rental Purchase Agreement. Motion, p.2:19-20; Dckt. 70.

The court addresses the "Lease," "Rental Agreement" presented to the court by Movant below.

Review of Rental/Purchase Agreement

Attached to the Declaration, and not filed as a separate exhibit document, is a copy of the is the "Rental Purchase Agreement." Dckt. 72 at p. 4-5. In the Declaration of Marquis Summers, who is identified as Corporate Counsel by Rocky Top Rental, LLC (Dec. 1:20-21), is Testimony submitted under penalty of perjury providing that a copy of the "Lease" for the portable storage building is attached to the Declaration.

The Testimony states that under the "Lease," Debtor was to make "lease payments" of $378.58 a month for 36 months. Declaration, p. ¶ 4; Dckt. 72. Further Testimony is provided that the "lease payments went into default as of April 15, 2020." *Id*.; ¶ 6. Rental Purchase Agreement, ¶ 4; Dckt. 72 at

The Rental Purchase Agreement provides that the Debtor is to make a monthly rental payments of $352.99 and a monthly Sales Tax payment of $25.59. Rental Purchase Agreement, ¶ 6. In Paragraph 4 of the Rental Purchase Agreement it states that the Debtor is only obligated to pay one month's rent. Then, when a payment is made, the Rental Purchase Agreement is renewed for one month, with such one month term, renewal, and one month term to continue to the end of the thirty-six month period stated in the Rental Purchase Agreement.

The Rental Purchase Agreement states that it is being made pursuant to the Kamette Rental-Purchase Act, California Civil Code §§ 1812.620 *et seq*. That Act addresses "rent to own" contracts of personal property for the personal use by a consumer. These provisions expressly provide that for such a Rent to Own Agreement, it will not constitute a retail installment contract, a retail installment account, or the creation of a security interest. Cal. Civ. § 1812.622(d)(2), (3), (4).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the unpaid amount to be paid under the Rental Purchase Agreement is $5,333.29, Debtor having ceased payments in April 2020, and the lease then not being renewed thereafter. Decl., Docket 72 ¶ 6. Debtor does not provide for the Property in her Plan (Docket 3), nor does Debtor schedule the Property in her Schedules A/B or G (Docket 1).

11 U.S.C. § 365(p) - Not a Basis For Relief From the Stay

11 U.S.C. § 365(p) states:

(p)

> (1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.
>
> . . .
>
> (3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.

In reading the plain language of the statute, it is clear that the lease of the Property has not been assumed. From the Motion and Testimony provided, there was no "lease" to be assumed or rejected in this Bankruptcy Case. Rather, that Debtor is merely in possession of former Rent to Own Property.

The Rental Purchase Agreement expressly includes as an event to Termination of the Rental, "If [Debtor] fails to make a timely rental renewal payment [a monthly rental payment], this Agreement terminates automatically." With the April 2020 default and Debtor not making that monthly payment, the Agreement terminated automatically.

Thus, the provisions of 11 U.S.C. § 365(p) do not apply to the current situation where there was no existing lease post-petition to be assumed or rejected. As such, the automatic stay does not apply as it was automatically terminated upon rejection of the lease of the Property. However, to the extent Debtor may have some residual contractual interest in the Property, the court continues the analysis.

The relief requested pursuant to 11 U.S.C. § 365(p) is denied without prejudice.

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 any payments since March of 2020. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Here, the Property was not property of the Debtor pre-petition, the Lease portion of the Rental Purchase Agreement terminated pre-petition, which resulted in the Purchase rights being terminated.

As now appears, the Property, which is owned by Movant, is physically located on the Debtor's property, which is real property of the Bankruptcy Estate. For Movant to obtain physical possession of the Property, which it owns and is not subject to a non-terminated Rental Purchase Agreement, Movant must "invade" the real property of the Bankruptcy Estate.

The court grants relief from the stay for cause, terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors to enter onto the real property at 5001 Bonanza Auto Road, Shingle Springs, California, and exercise its rights to take possession of the personal property identified as a "Portable Storage Building," "Playhouse" that is eleven (11) feet by twenty-eight (28) feet, and described in the Rental Purchase Agreement and Disclosure Statement filed as Exhibit 1 (Dckt. 72, p. 3-7) and the Old Hickory Sheds, Brothers Vacuums, Inc. Order Form (Dckt. 72 at 10), to remove any personal property from "Portable Storage Building," "Playhouse," belonging to the Debtor, Bankruptcy Estate, or third-party, take possession of, remove, and use or dispose of the "Portable Storage Building," "Playhouse" as the owner thereof.

Other than to remove any personal property of the Debtor or the Bankruptcy Estate that is located in the "Portable Storage Building," "Playhouse," the court does not modify the Stay to allow Movant, and its agents, representatives, and successor to take control of, remove, sell, or otherwise dispose of any property of the Debtor or the Bankruptcy Estate.

11 U.S.C. § 362(d)(2)

The Debtor has no equity in the Property because Debtor does not and did not own the Property, but was renting the Property. The Rental thereof and any interest to purchase the Property has, for purposes of this Motion, terminated years prior to the commencement of this Bankruptcy Case. There being no interest of the Debtor or the Estate in the Property, the relief requested pursuant to 11 U.S.C. § 362(b)(2) is denied without prejudice.

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, for no particular reason, that the court grant relief from the Rule as adopted by the United States

Supreme Court. The court typically likes to see some persuasive reasoning for why relief from Federal Rule of Bankruptcy Procedure 4001(a)(3) should be granted. However, based on these facts and Debtor not having providing for the Property in the confirmed Plan, thus rejecting the lease, the court will waive the fourteen-day stay of enforcement.

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 Rocky Top Rentals, 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 Relief Requested pursuant to 11 U.S.C. § 362(b)(2) and § 365(p), and each of them is denied without prejudice.

IT IS FURTHER ORDERED that the Motion is granted and the court modifies and terminates the Automatic Stay provisions of 11 U.S.C. § 362(a) to allow Movant, and its agents, representatives and successors to enter onto the real property at 5001 Bonanza Auto Road, Shingle Springs, California, and exercise its rights to take possession of the personal property identified as a "Portable Storage Building," "Playhouse" that is eleven (11) feet by twenty-eight (28) feet, and described in the Rental Purchase Agreement and Disclosure Statement filed as Exhibit 1 (Dckt. 72, p. 3-7) and the Old Hickory Sheds, Brothers Vacuums, Inc. Order Form (Dckt. 72 at 10), to remove any personal property from "Portable Storage Building," "Playhouse," belonging to the Debtor, Bankruptcy Estate, or third-party, take possession of, remove, and use or dispose of the "Portable Storage Building," "Playhouse" as the owner thereof.

Other than to remove any personal property of the Debtor or the Bankruptcy Estate that is located in the "Portable Storage Building," "Playhouse," the court does not modify the Stay to allow Movant, and its agents, representatives, and successor to take control of, remove, sell, or otherwise dispose of any property of the Debtor or the Bankruptcy Estate.

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.

7. **23-23766-E-13** **TAMMY ANDREWS** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
PJK-1 **Patricia Wilson** **4-23-24 [45]**

DEBTOR DISMISSED: 05/03/24
NEWREZ LLC VS.

Final Ruling: No appearance at the May 21, 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, parties requesting special notice, and Office of the United States Trustee on April 23, 2024. By the court's calculation, 28 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.

NewRez LLC d/b/a Shellpoint Mortgage Servicing as servicer for Citibank, N.A., not in its individual capacity but solely as Owner Trustee of New Residential Mortgage Loan Trust 2020- RPL1 ("Movant") seeks relief from the automatic stay with respect to Tammy Marie Andrews' ("Debtor") real property commonly known as 230 N 14th Street, Montague, California 96064 ("Property"). Movant has provided the Declaration of Kateryna Halfwassen 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 May 3, 2024, when the court granted the Chapter 13 Trustee, David Cusick's ("Trustee"), Motion to Dismiss. Dckt. 52.

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 May 3, 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 May 3, 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 NewRez LLC d/b/a Shellpoint Mortgage Servicing as servicer for Citibank, N.A., not in its individual capacity but solely as Owner Trustee of New Residential Mortgage Loan Trust 2020-RPL1 ("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 May 3, 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 Tammy Marie Andrews ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 230 N 14th Street, Montague, California 96064, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the May 3, 2024 dismissal of this bankruptcy case.