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4 UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6 OAKLAND DIVISION

7 ERLINDA ABIBA ANIEL, an individual;  
8 FERMIN SOLIS ANIEL, an individual;  
9 MARC JASON ANIEL, an individual,

10 Plaintiffs,

11 v.

12 GMAC MORTGAGE, LLC; EXECUTIVE  
13 TRUSTEE SERVICES, LLC., DBA ETS  
14 SERVICES, LLC; AND DOES 1 THROUGH  
50,

Defendants.

Case No: C 12-04201 SBA

**ORDER GRANTING  
MOTION TO STAY**

Docket 41

15 Plaintiffs Erlinda Aniel, Fermin Aniel, and Marc Aniel (collectively, “Plaintiffs”)   
16 bring the instant action against Defendants GMAC Mortgage, LLC and Executive Trustee   
17 Services, LLC, dba ETS Services, LLC (collectively, “Defendants”), alleging various   
18 claims for relief in connection with their mortgage loan and Defendants’ attempt to   
19 foreclose on their real property located at 75 Tobin Clark Drive, Hillsborough, CA 94010.   
20 See Compl., Dkt. 1. The parties are presently before the Court on Defendants’ motion to   
21 stay pending completion of bankruptcy proceedings. Dkt. 41. Plaintiffs oppose the motion.   
22 Dkt. 44. Having read and considered the papers filed in connection with this matter and   
23 being fully informed, the Court hereby GRANTS Defendants’ motion, for the reasons   
24 stated below. The Court, in its discretion, finds this matter suitable for resolution without   
25 oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

26 **I. BACKGROUND**

27 On May 14, 2012, Defendants filed petitions for Chapter 11 Bankruptcy in the   
28 United States Bankruptcy Court for the Southern District of New York (“Bankruptcy

1 Court”), thus triggering the automatic stay set forth in 11 U.S.C. § 362(a).<sup>1</sup> On July 13,  
2 2012, the Bankruptcy Court issued an order (“Final Supplemental Order”) modifying the  
3 terms of the automatic stay. See Final Supplemental Order, Dkt. 15.

4 In particular, the Final Supplemental Order allows for limited relief from the  
5 automatic stay for “a borrower, mortgagor, or lienholder (each, an ‘Interested Party’) . . . to  
6 assert and prosecute direct claims and counter-claims relating exclusively to the property  
7 that is the subject of the loan owned or serviced by a Debtor for the purpose of defending,  
8 unwinding, or otherwise enjoining or precluding any foreclosure, whether in a Judicial  
9 State or a Non-Judicial State. . . .” Final Supplemental Order ¶ 14(a). The Final  
10 Supplemental Order provides that “absent further order of the Court, the automatic stay  
11 shall remain in full force and effect with respect to all pending and future Interested Party  
12 direct claims . . . (i) for monetary relief of any kind and of any nature against the Debtors,  
13 except where a monetary claim must be plead in order for an Interested Party to assert a  
14 claim to defend against or otherwise enjoin or preclude a foreclosure (each a ‘Mandatory  
15 Monetary Claim’); (ii) for relief that if granted, would not terminate or preclude the  
16 prosecution and completion of a foreclosure or eviction. . . .” Id. ¶ 14(b). Significantly, the  
17 Final Supplemental Order also provides that “any disputes regarding the extent, application,  
18 and/or effect of the automatic stay under this Order shall be heard and determined in the  
19 Debtors’ jointly administered bankruptcy cases pending in the United States Bankruptcy  
20 Court for the Southern District of New York, Case No. 12-12020 in accordance with the  
21 Case Management Order entered in the Debtors’ cases.” Id. ¶ 23.

## 22 **II. DISCUSSION**

23 Defendants move for an order staying the instant action pending completion of the  
24 bankruptcy proceedings. See Defs.’ Mot. at 1, Dkt. 41. Defendants contend that a stay is  
25 warranted pursuant to the automatic stay set forth in § 362(a) and the terms of the Final  
26 Supplemental Order. Id.

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28 <sup>1</sup> Section 362 prohibits, among other things, “the commencement or continuation . . .  
of a judicial . . . or other action or proceeding against the debtor.” See 11 U.S.C. § 362(a).

1 “When a debtor files a bankruptcy petition, an automatic stay immediately arises.”  
2 See Hilis Motors, Inc. v. Hawaii Auto. Dealers Ass’n, 997 F.2d 581, 585 (9th Cir. 1993);  
3 11 U.S.C. § 362(a). This stay is designed “to effect an immediate freeze of the *status quo*  
4 by precluding and nullifying post-petition actions, judicial or nonjudicial, in nonbankruptcy  
5 fora against the debtor or affecting the property of the estate.” Hilis Motors, Inc., 997 F.2d  
6 at 585 (italics in original). The goal of this automatic stay is to “ensure that all claims  
7 against the debtor will be brought in a single forum, the bankruptcy court.” Id. Aside from  
8 the limited exceptions set forth in § 362(b), “[t]he stay of section 362 is extremely broad in  
9 scope and . . . should apply to almost any type of formal or informal action against the  
10 debtor or property of the estate.” In re Miller, 397 F.3d 726, 730-731 (9th Cir. 2005).  
11 While the automatic stay is broad in scope, “section 362(d) ‘gives the bankruptcy court  
12 wide latitude in crafting relief from the automatic stay.’” In re Nat’l Envtl. Waste Corp.,  
13 129 F.3d 1052, 1054 (9th Cir. 1997). Specifically, the bankruptcy court may, “grant relief  
14 from the stay . . . such as by terminating, annulling, modifying, or conditioning such stay.”  
15 11 U.S.C. § 362(d).

16 Here, Plaintiffs do not dispute that the automatic stay set forth in § 362(a) applies to  
17 the instant action. Instead, they contend that Defendants’ motion to stay should be denied  
18 because they have a right under the Final Supplemental Order to “continue to prosecute  
19 [their] claims relating to defending, unwinding, or enjoining a foreclosure. . . .” Pls.’ Opp.  
20 at 3, Dkt. 44. Defendants disagree, arguing that Plaintiffs are prohibited from prosecuting  
21 any of their claims because “each claim, if successful, would result in either monetary  
22 damages or pecuniary loss to Defendants.” Defs.’ Mot. at 1. Defendants further argue that  
23 “if Plaintiffs wish to dispute the extent of the automatic stay under the Final Supplemental  
24 Order they must have their dispute heard in the Bankruptcy Court, not here.” Id.

25 The Court finds that Defendants’ filing of Chapter 11 Bankruptcy petitions triggered  
26 the automatic stay set forth in § 362(a). As such, the remaining issue is whether the Final  
27 Supplemental Order, which modifies the terms of the automatic stay, allows Plaintiffs to  
28 prosecute any of their claims. The Court finds that this issue must be resolved by the

1 Bankruptcy Court. The plain language of the Final Supplemental Order provides that the  
2 Bankruptcy Court “shall” resolve “any disputes regarding the extent, application, and/or  
3 effect of the automatic stay. . . .” Final Supplemental Order ¶ 23. Plaintiffs offer no  
4 authority or legal analysis demonstrating that it is proper for the Court to resolve the  
5 parties’ dispute regarding the scope of the automatic stay. Accordingly, because this action  
6 is subject to the automatic stay set forth in § 362(a), Defendants’ motion to stay is  
7 GRANTED. To the extent Plaintiffs wish to prosecute any of their claims while the  
8 bankruptcy proceedings are pending, Plaintiffs must raise this issue with the Bankruptcy  
9 Court.

10 **III. CONCLUSION**

11 For the reasons stated above, IT IS HEREBY ORDERED THAT:

12 1. Defendants’ motion to stay is GRANTED. This action is STAYED pending  
13 completion of the bankruptcy proceedings.

14 2. The Clerk shall ADMINISTRATIVELY CLOSE the file. In the event the  
15 Bankruptcy Court determines that Plaintiffs may prosecute any of their claims during the  
16 pendency of the bankruptcy proceedings, Plaintiffs may file a motion to reopen the case.

17 3. The parties are instructed to submit status reports to the Court every six (6)  
18 months, apprising the Court of the status of the bankruptcy proceedings.

19 4. Upon completion of the bankruptcy proceedings, the parties shall jointly  
20 submit to the Court, within two (2) weeks, a letter requesting that a case management  
21 conference be scheduled.

22 5. This Order terminates Docket 41.

23 IT IS SO ORDERED

24 Dated: 6/12/2014

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge