

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**September 15, 2020 at 1:30 p.m.**

1. [20-90112-E-7](#) SATI SEN  
[RHS-1](#)

**STATUS CONFERENCE**  
**RE: VOLUNTARY PETITION**  
**2-10-20 [1]**

Debtor's Atty: Mark J. Hannon

Notes:

Set by order of the court filed 9/9/20 [Dckt 52]. Debtor and Debtor's counsel of record, Mark Hannon, ordered to appear.

**The Status Conference is XXXXXXXXXX**

On February 10, 2020, Sati Sen, the Debtor, commenced this voluntary Chapter 7 bankruptcy case. Petition, Dckt. 1. Her counsel in this case is Mark Hannon, Esq. The Trustee's Report of No Distribution in this case was entered on June 3, 2020. The Notice of the Report of No Distribution was entered on June 4, 2020, and was served on June 6, 2020. Dckts. 16, 17.

The Debtor's Certificate of Personal Financial Management Course completion was filed on June 2, 2020. Dckt. 15. The deadline for filing objections to discharge expired on June 8, 2020, with no such objection having been filed against the Debtor.

A Notice of Intent to Close Chapter 7 Case Without Entry of Discharge was filed on June 10, 2020. Dckt. 18. The Notice of Intent states that the Debtor's final filing fee installment of \$163.00 has come due and has not been paid. As of the court's September 4, 2020 review of the Docket, no receipt stating payment of the final filing fee installment had been issued, thus indicating that the final fee installment had not yet been paid.

A series of documents have been filed by Debtor Sati Sen personally, and not by Debtor's attorney of record in this case for Debtor. These indicate that Debtor Sati Sen seeks to discharge the attorney of record, Mark Hannon, and proceed in *pro se*. Some indicate that Debtor is attempting to obtain a mortgage loan modification, noting that the process is not going "smoothly."

Additionally, on September 1, 2020, Debtor Sati Sen filed a Notice of Appeal of this court's

August 7, 2020 order granting relief from the automatic stay to Wilmington Trust, N.A., as Trustee, to proceed to exercise foreclosure rights on the real property identified as 1833 Darby Lane, Ceres, California (which is not listed as property of the Debtor on the Schedules). The Notice of Appeal was filed twenty-four days after the court's order granting relief from the stay was entered on the docket.

In the documents filed, Debtor Sati Sen asserts that there is a substantial equity in the property and that Debtor seeks to retain the property, paying the obligations (some of which are disputed) secured by the property.

**REVIEW OF MOTION FOR RELIEF  
AND  
DOCUMENTS FILED BY DEBTOR SATI SEN**

Debtor Sati Sen has filed a series of documents which indicate that Debtor is not pleased with Debtor's attorney of record and seeks to proceed in *pro se*. Statements in the documents indicate that unidentified persons in counsel of record's office are saying that Mark Hannon no longer represents Debtor because, as Debtor states it, "Debtor's case has been discharged."

While the Debtor's efforts have not resulted in getting any motion set for hearing before the court, it appears in this flurry of activity a procedural dysfunction exists. Debtor is not an attorney and it is not expected that such a person would know and understand the judicial process. However, the court has to maintain a proper procedure to provide for Due Process for all parties. The judicial process is not one in which letters are written to the court requesting relief or a document titled motion requesting relief is filed with the court and not set for a hearing.

This correspondence and other documents filed with the court having now been brought to the attention of the judge, to address the dysfunction, the court set an immediate Chapter 7 Status Conference to get the Debtor and counsel of record before the court. The court also provides the following summary review and some comments concerning the documents filed with the court.

**Motion for Relief From Stay**

On June 26, 2020, Wilmington Trust, N.A., as Trustee, filed a Motion for Relief From the Automatic Stay concerning real property identified as 1833 Darby Lane, Ceres, California. Dckt. 20. The Motion sought relief from the stay, stating that there were two post-petition payments that were in default and there were eight pre-petition payments (totaling \$9,073.12) which were in default. Civil Minutes, Dckt. 31. No opposition to the Motion was filed. Relief from the automatic stay was granted. Civil Minutes and Order; Dckts. 31, 32. The order granting relief from the stay was filed on August 7, 2020.

In the Motion for Relief, the moving creditor states with particularity that relief is sought pursuant to the independent grounds of 11 U.S.C. § 362(d)(1), which is for cause, and § 362(d)(2), which is for lack of equity for the Debtor or bankruptcy estate and it not being necessary for an effective reorganization (this being a Chapter 7 case, there can be no reorganization).

The Motion states that Debtor has defaulted in ten monthly payments due on the obligation secured by the above property, with the defaults being for the months of July 2019 through April 2020, stating that another payment was coming due on May 1, 2020. Motion, ¶¶ 8, 9; Dckt. 20.

The Motion further states that on Debtor's Schedules A/B and D, the value of the property is stated to be \$346,000.00, and it is encumbered by a senior deed of trust securing an obligation of (\$203,000.00) and a second deed of trust securing the moving creditor's obligation of (\$208,710.22). *Id.*, ¶ 10. As discussed below, in the documents filed by Debtor, it appears that some dispute as to the value of the property, as well as the obligations asserted to be secured thereby, may exist.

Additionally, as discussed below, Debtor does not list the property on Schedule A/B as being real property in which Debtor has an interest.

### **Documents Filed By Sati Sen, the Debtor**

#### Letter re Change of Counsel

On August 5, 2020, a letter from "Sati Singh" (which is identified on the Petition as another name used by Debtor in the prior eight years) was received by the Clerk of the Court. Dckt. 29. The letter states that Sati Singh wants to have counsel Mark Hannon dismissed immediately. The basis for such dismissal as stated in the letter includes the following:

- a. "I showed the council [sic] Assit the statements of my 1st mortgage being active and that the 2end [which the court interprets as "second"] loan foreclosed on the property."
- b. "The counsel disregarded my 1st lien statement and told me the entire first and the 2end loan both are sold and that Mr. More house Homes, In is the Owner of the house and it has been varified [sic] by the County Recorders Office."
- c. "On June 2end I had the BK hearing and I went through in the Counsels Office. The case ended discharged."

The Trustee June 3, 2020 Docket Entry Report states that the First Meeting of Creditors was concluded on June 2, 2020. The Trustee's reports states that both the Debtor and Debtor's counsel of record (which is Mark Hannon) appeared.

- d. The letter then states that the holder of the first mortgage is SPS. On Friday, May 29th, the Debtor called SPS and talked with a representative and "he says he already got the result from my counsel that the case is discharged. I told him its on the 2end and thus the conversation was over."

In the context of this paragraph the "2end" appears to be a reference to the June 2, 2020 First Meeting of Creditors.

- e. "[I]ater called SPS and than I was told my case was with the trustee. There was no Judge."
- f. "Good Lord Now the 1st Mortgage is in the Picture."
- g. "I want justice I am trying to keep my house."

Letter, Dckt. 29.

### Change in Designation of Counsel for Service

On August 26, 2020, the Debtor filed a Change in Designation of Counsel for Service form, in which an adversary proceeding identified as *Sati Sen, aka Sati Singh v. SPS; HomeOwners First, LLC*, is stated as being the matter for which the form is filed. Dckt. 34. It states that Sati Singh (Pro Per) is designated as counsel for the adversary proceeding and that Mark Hannon is no longer representing Sati Sen.

Attached to the Change in Designation of Counsel for Service form is an “Exhibit” PROPOSED ORDER submitted by “PRO SE FILER” to substitute Sati Sen (aka Sati Singh).

A review of the court’s files discloses that there is no adversary proceeding for Sati Sen that has been filed in this District.

### Adversary Proceeding Cover Sheet

An adversary proceeding cover sheet was filed with the court by Sati Sen on August 26, 2020. Dckt. 35. It states that the Plaintiff is Sati Sen and the Defendants are Select Portfolio Services and Home Owners First, LLC. The Debtor states that the relief sought is “Objection to Discharge,” specifically (using the number on the cover sheet):

- (3) Validity, priority or extent of lien or other interest in property;
- (2) Objection/revocation of discharge;
- (1) Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud;
- (5) Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny; and
- (4) Injunctive relief- imposition of stay

The demand amount stated on the cover sheet is \$470,000.00. For other relief sought, it is stated:

For 1st Loan to be modified & for Plaintiffs to continue with the monthly payments & outstanding balance to be added to the back of the loan & for stay order to be active until case is resolved.

Dckt. 35.

No adversary proceeding has been commenced by or for Debtor. It may be that Debtor Sati Sen believed that the Adversary Proceeding cover sheet was some type of form pleading document that one finds in the state court system. It is not.

### Second Change in Designation of Counsel For Service

On August 31, 2020, a second Change in Designation of Counsel for Service form was filed with the *Sati Singh v. SPS; Home Owners First, LLC* adversary proceeding identified in the caption. Dckt. 39. No adversary proceeding has been filed in this District.

Attached to this Change in Designation form, is a two page "Letter in Support" with the following typed signature "Sati Singh [the Debtor]/Bimlesh Singh [who is identified as Debtor's brother]. Dckt. 39 at 2-3. The statements in the Letter in Support include:

- A. Debtor and her brother request that Mark Hannon be dismissed.
- B. "We have many different issues with the attorney where there have misleading information that was given to us and deliberately misdirecting and denying the fact that they were still representing me on the case and I would like to represent my self Pro Per with the help of my brother Bimlesh Singh."
- C. "When the SPS submitted their side of the papers for the stay order to be removed, I called Mr. Hannons office and asked them what our next step would be. The assistant of Mr. Hannon stated that after the June 2<sup>nd</sup>, 2020 case, Mr. Hannon doesn't represent us any more and since the case is discharged the case is over."

Merely because the First Meeting of Creditors is completed or a debtor may receive a discharge (none has yet been entered in the current case), the attorney-client relationship in a bankruptcy case between the debtor and debtor's counsel does not cease. See Disclosure of Compensation of Attorney For Debtor, Dckt. 1 at 44, and Local Bankruptcy Rule 2017-1(a).

- D. "They [apparently counsel of record's staff] stated that I no longer have my house and the house is sold. There's nothing I can do."
- E. "On the 6<sup>th</sup> of August I made various calls to them and they were not picking up the calls and on 6<sup>th</sup> of August I called again for I was calling back and forth to Mr. Hannons office and to SPS who have told me that Mr. Hannon is still representing me. I called again on and they said that they don't represent me and that my case is discharged."
- F. "The whole day before 10am I called the trustee office and called various people in bankruptcy court so I can object to the removal of the stay order by SPS however unfortunately I was told that there is no case today and I asked how I would be notified and I again was told to get in contact with Mr. Hannon my attorney."
- G. "On Saturday the 7<sup>th</sup> the stay order was lifted and granted by the judge. There is no court case on Saturday that means that this is a planned fraudulent case going on so that I can't save my house thus I am requesting the jury trial."

The court notes that August 7, 2020, was a Friday.

- H. "On Monday I again called SPS and I was notified by bankruptcy department that the stay order was removed by the judge and that is how I came to know."
- I. "Now the house is sold on June 2<sup>nd</sup> and I was told on my hearing that instead of the judge the trustee was handing my case and stated that there is no first loan."
- J. "On May 29<sup>th</sup> which was on Friday I called SPS and they stated the case is discharged

and I told them that I have the court date on the 2<sup>nd</sup> of June and the trustee stated that you owe more than what the house is worth which he said about 600,000 and that I should let go of the house and that there is no first lien or mortgage any more and so I agreed.”

- K. “The attorney was the one that put the 600,000 for the loan amount and stated that I have no equity in the house however I only owe \$157,000 for my first loan and the loan is still in dispute because it is a fraudulent servicer however was sold for \$121,000.”
- L. “All together the debt of the house with the 2<sup>nd</sup> fraudulent loan is \$278,000 and the value of the house according to [www.trulia.com](http://www.trulia.com) and [www.zillow.com](http://www.zillow.com) is \$523,226.”
- M. “If we subtract the market value of \$523,226 with the value of the combined debt of \$278,000 which leaves an equity in the amount of \$245,226 which is more than enough to secure the first debt.”
- N. “SPS has informed us that they are working on modifying our loan and to set us up with a new monthly payment so we can continue on residing at our home.”
- O. “This is the third application of (RMA) request for mortgage assistance that we have submitted with them and are awaiting a modification. Each time SPS informs that a document is missing and after I submit that on residing at our home. This is the third application of (RMA) request for mortgage assistance that we have submitted with them and are awaiting a modification. Each time SPS informs that a document is missing and after I submit that document then they tell me that I have to submit a new request for mortgage assistance and this is my third application that I have submitted with them.”
- P. “I have asked them if I can continue on paying my payment from where I left off and they continue to inform me to complete a RMA.”
- Q. “Also the relief from stay summary sheet that was filed by SPS for the hearing on August 6, 2020 has the first loan at \$208,741 and the 2<sup>nd</sup> loan at \$203,000 of which both are incorrect and the appraised value of the house is listed at \$346,000 which shows a equity of \$-65,710.22 which is also incorrect. Again according to Zillow and Trulia the value is \$523,226 and if this value is used then there is still over \$100,000 of equity left in the house.”
- R. “I am again requesting your honor that if you can terminate the order lifting the stay and grant the motion for a stay again.”
- S. “Mr. Hannon has been representing me from behind my back and upfront has been telling me that they don't represent me anymore. However I have evidence from SPS that states that they have been communicating with SPS and Mr. Hannon has been working with the 2<sup>nd</sup> mortgage investor and has been working to sell my house so they can also get a share from the equity in my house.”
- T. “Again I am requesting a jury trial until everything is carefully examined and

investigated.”

- U. “My first loan is still standing and I have applied for a Mortgage Assistance Program and your honor I intend to keep my home and I would like to set up a payment plan and continue making payments the way I used to before this fraudulent foreclosure happened.”
- V. “I had previously submitted a document to dismiss the attorney where I am able to see the motion on Pacer however there was no action take. On Thursday, August 27<sup>th</sup> I submitted an order approving substitution of attorney (form EDC 6-506; form EDC 2-613 and form EDC 2-613 adversary proceeding to the bankruptcy court.”
- W. “I am going to file these documents just in case the documents never made it. Thank you for your help your honor.”

Dckt. 39.

#### Motion to Extend Automatic Stay

On September 1, 2020, the Clerk’s Office received a pleading titled “Motion to Extend Automatic Stay from Debtor Sati Sen. Dckt. 40. The Motion form has a block at the start of the pleading stating that Notice is given of a hearing to be conducted at a date, time, and location specified therein. That information is left blank and the Motion has not been set for a hearing.

The relief stated in the Motion form is for relief pursuant to 11 U.S.C. § 362(c)(3)(B). That relief would be to not have the automatic stay terminate as to the debtor by operation of law, 11 U.S.C. § 362(c)(3)(A), due to the debtor having had pending and dismissed one prior bankruptcy case in the year preceding the commencement of the case then pending before the court. In the Motion form, Debtor Sati Sen identifies the prior case she had in the preceding year, 19-90572, and states that it was “Dismissed for failure to file Information.” Dckt. 40 at 1.

On September 2, 2020, the Clerk of the Court sent a Calendar Correction Notice stating that Debtor’s attorney of record, Mark Hannon, had been contacted and notified that the Motion to Extend the Stay had to be set for hearing by the party seeking the relief. Dckt. 46. A copy of this Calendar Correction Notice was also mailed to Debtor Sati Sen, Mr. Hannon, and the attorney for SPS and Wilmington Trust. Certificate of Service. Dckt. 47.

#### Notice of Appeal Documents

On September 1, 2020, Debtor Sati Sen filed a Notice of Appeal. Dckt. 42. On it Sati Sen checked the box stating that it was an appeal by the Debtor as the Plaintiff in an adversary proceeding, and also as the Debtor in the bankruptcy case. Dckt. 42 at 1. The Notice of Appeal was filed twenty-four days after the court’s order granting relief from the stay was entered on the docket.

#### Substitution of Attorney Form

A Substitution of Attorney Form was filed on September 3, 2020, by Debtor Sati Sen. Dckt. 48.

This states that the Debtor Sati Sen is substituted in *pro se* in the place of Mark Hannon. This Substitution is not signed by Debtor's attorney of record Mark Hannon.

On September 3, 2020, Debtor Sati Sen also filed a document titled "Motion for Notice of Hearing For Substitution of Attorney." Dckt. 49. This one page document does not have a hearing time or date filled in.

The court can speculate that Debtor Sati Sen is filing this Motion for Notice of Hearing in the belief that the court will then set a hearing date on the substitution of counsel. As provided in Local Bankruptcy Rule 9014-1(b), the parties set the hearing dates and times for their motions.

### **ORDER FOR CHAPTER 7 STATUS CONFERENCE**

As shown above, in this Chapter 7 case Debtor is attempting to prosecute various claims and rights, doing so without representation of counsel. For some items, such as commencing an adversary proceeding, or prosecuting an appeal, Debtor may choose to do so. For others, such a motion for relief from the stay, Debtor's counsel of record is Debtor's attorney. In attempting to proceed in *pro se*, Debtor makes reference to doing so with Debtor's brother - Bimlesh Singh.

#### Bankruptcy Cases Filed by Debtor's Brother Bimlesh Singh

A review of the court's file disclosed that Bimlesh Singh, who is identified as Debtor's brother, has filed two bankruptcy cases in this District. The first is case 19-90569, a Chapter 13 case that was filed on June 20, 2019, and dismissed on December 18, 2019. Counsel for Bimlesh Singh in the Chapter 13 case is Jessica Dorn, an attorney for whom there is no court known connection or affiliation with Thomas Gillis or Mark Hannon (Debtor's prior and current attorneys, respectively). The Motion to Dismiss Bimlesh Singh's Chapter 13 case is supported by a Declaration which states that Bimlesh Singh failed to attend the First Meeting of Creditors and for his case that was filed on June 20, 2019, Bimlesh Singh had paid only \$490.00 in plan payments through September 2019.

On Amended Schedule A/B, Bimlesh Singh states under penalty of perjury that he owns the 1833 Darby Lane, Ceres, California, property and there are no other persons having any interest in that property. No right or interest of Debtor Sati Sen as of the July 5, 2019 filing of Amended Schedule A/B is stated to exist. 19-90569, Dckt. 10 at 3. Bimlesh Singh states under penalty of perjury that the property has a value of only \$399,500.00. *Id.*

On Amended Schedule A/B Bimlesh Singh states under penalty of perjury that there was a claim being asserted against a third-party, but such claim was being dismissed:

Pending lawsuit against Homeowners First, LLC for wrongful foreclosure. Lawsuit will be dropped. Value is zero as this was just filed to obtain injunctive relief.

*Id.* at 7.

Bimlesh Singh's second case is a Chapter 7 case filed in *pro se* on September 2, 2020. 20-90607. Bimlesh Singh lists his address as the prior stated foreclosed property – 1833 Darby Lane, Ceres,

California. 20-90607; Petition, Question 5, Dckt. 1. The Schedules and Statement of Financial Affairs have not yet been filed by Bimlesh Singh in his second bankruptcy case. Gary Farrar is the Chapter 7 Trustee to whom Bimlesh Singh's case has been assigned by the U.S. Trustee.

### Schedules and No Ownership of Real Property

In looking at the Schedules filed in this case, and signed by Debtor Sati Sen under penalty of perjury, there appear to be some inconsistencies in what is asserted. On the Petition, Debtor lists 1833 Darby Lane, Ceres, California, as Debtor's residence. Petition, Question 5; Dckt. 1 at 2. On Schedule A/B, Debtor Sati Sen states under penalty of perjury having no interest in any real property. Dckt. 1 at 11.

On Schedule D, Debtor Sati Sen does list there being two claims secured by the 1833 Darby Lane property - with the creditors identified as "Chase" and "Home Owners Fist." *Id.* at 17.

In looking at the Schedules, Debtor states under penalty of perjury that Debtor has no priority unsecured claims and for general unsecured claims only (\$1,114.00) that is owed to "Chase." Schedules E/F; *Id.* at 19-21. There is listed "Brown Gee & Wenger, LLP" as a creditor with an unknown unsecured claim arising from an "Unlawful Detainer." An internet search indicates that Brown Gee & Wenger, LLP is a law firm in Walnut Creek, California.

On the Statement of Financial Affairs (Part 4, Question 9), Debtor Sati Sen states that there is pending an unlawful detainer complaint against the Debtor ("Rodolfo Silvia" listed as the plaintiff) that is pending in the California Superior Court, "County of Turlock Branch." <sup>1</sup>

Looking at these Schedules, it is curious that Debtor would choose to expend the extraordinary relief available under Chapter 7 for a mere debt of (\$1,114.00), and thereby be barred from obtaining a discharge of further debt through a Chapter 7 case for eight years (11 U.S.C. § 727(a)(8)).

### Schedules I and J - No Income and No Housing Expenses

Reviewing Schedule I, Debtor states under penalty of perjury that Debtor has no income. Dckt. 1 at 24-25. For expenses, on Schedule J, Debtor states under penalty of perjury that Debtor has no mortgage payment or rent, no home maintenance or insurance, but Debtor states paying utility bills that would be related to a residence. *Id.* at 27-28.

On the Statement of Financial Affairs, Debtor Sati Sen states under penalty of perjury that Debtor has had no income in 2020, and no income from any source in 2019 and 2018. Statement of Financial Affairs Questions 4, 5. *Id.* at 29, 30.

Debtor Sati Sen also states under penalty of perjury on the Statement of Financial Affairs, Question 10, that both Select Portfolio Servicing and "Homeowners First, LLC" foreclosed on the 1833 Darby Lane, Ceres, California property. *Id.* at 31.

---

<sup>1</sup> The City of Turlock being in this District, the court takes judicial notice that there is no "County of Turlock," but the City of Turlock is located in Stanislaus County, California.

Stating that such foreclosure had occurred would be consistent with saying under penalty of perjury that Debtor Sati Sen had no interest in any real property on Schedule A. However, it is inconsistent with listing a former creditor that foreclosed on the property (Homeowners First, LLC) as a creditor with a secured claim on Schedule D.

No Disclosure of Attorney's Fees  
In Connection with June 2019 Case Filed

Also, on the Statement of Financial Affairs it is disclosed that \$2,000.00 was paid to Mark Hannon, dba Latino Law, Inc. on February 10, 2020, for assistance in preparing for filing or filing a bankruptcy case. Statement of Financial Affairs Question 16; *Id.* at 32. However, no information is provided about fees paid to Thomas Gillis (formerly an attorney licensed to practice law and who now is working as a paralegal for Mark Hannon) for the Chapter 13 case he filed for Debtor on June 21, 2019. From a review of Mr. Gillis' filing in this District, it was generally Mr. Gillis' practice to obtain a \$2,000.00 to \$4,000.00 up front payment before filing a Chapter 13 case. If Mr. Gillis was paid in connection with the prior case that was filed within one year of this case, such payments must be disclosed.

There are several significant inconsistencies in statements being made under penalty of perjury in the various bankruptcy cases by Debtor Sati Sen and Bimlesh Singh. They state that the Ceres, California property has been foreclosed on. Then Debtor Sati Sen states that Debtor seeks to have loan modifications processed. Debtor Sati Sen states that Debtor's attorney of record states that he no longer represents Debtor Sati Sen. Then, Debtor Sati Sen is sending multiple documents to the court, but setting nothing for hearing or otherwise effectively seeking relief in this federal court.

**September 15, 2020 Status Conference**

At the Status Conference, **XXXXXXXXXX**

**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 (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion for Turnover 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 Turnover is XXXXX.**

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 6225 Howard Avenue, Riverbank, California ("Property"). Movant requests the Debtor immediately turn over the Property to Movant and vacate the Property within five (5) days of the entry of the order.

### **July 16, 2020 Hearing**

At the July 16, 2020 hearing, the court continued the hearing to afford the Debtor the opportunity to obtain counsel and obtain a family member, friend, or other person to provide her with a translation of what is occurring and that she needs to act to protect her right.

### **August 6, 2020 Hearing**

At the hearing, Counsel for the Trustee reported that counsel for the Debtor has substituted in and has filed amended Schedules stating an exemption.

The Trustee requested a continuance to September 10, 2020 at 10:30 a.m., to be heard in conjunction with a motion by the Debtor to convert it to one under Chapter 13.

Debtor's Motion to Convert the Case from Chapter 7 to Chapter 13 was denied.

## **DISCUSSION**

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Maribel Soto Rivera ("Debtor") to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

While a review of the Docket shows Debtor claimed the Property as exempt in her Schedule C as "100% of fair market value," (Dckt. 20), the court entered an order on April 6, 2020 sustaining Trustee's objection due to Debtor failing to specify the code section for the exemption and alternatively, if the exemption is claimed under Section 703.140(b)(5) of the California Code of Civil Procedure, Debtor would exceed the permitted exemption amount (Dckt. 48). Since then, Debtor has "hindered and delayed" Trustee's efforts by failing to cooperate with the Trustee and his realtor to list and market the Property. Motion, Dckt. 59.

## **Enforcement of Turnover Orders**

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July

28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at \*2–5.

Debtor’s counsel was unable to attend the hearing, due to a conflict in another court. Therefore, the court continues the hearing so that counsel will be present and clearly understand and be able to communicate to Debtor what the court ultimately orders. Debtor’s counsel was able to obtain other counsel to make a courtesy appearance. The counsel making the courtesy appearance communicated that Debtor’s counsel was requesting a 60 day continuance so that Debtor could look into obtaining a refinance or think about whether she would want to sell the property.

The court did not grant the request for a continuance, concerned as to how the Debtor has let this case drag. This case was filed by Debtor on December 19, 2020. On April 16, 2020, the Trustee filed his motion to hire a real estate broker to sell the property of the estate. Dckt. 51. On June 3, 2020, the Trustee filed this Motion to Compel the Turnover of Property of the bankruptcy estate. Dckt. 59. The court has continued the hearing twice over the past sixty-eight days to allow Debtor to obtain counsel and address the issue.

Debtor obtained counsel, who substituted in on August 5, 2020. Dckt. 75. However, Debtor has not filed any opposition to this Motion. Debtor did file a “check the box form” motion to convert this case to one under Chapter 13 (Dckt. 77), which was not supported by any testimony of the Debtor or any explanation as to how this Debtor with such limited means could in good faith prosecute a Chapter 13 case. As the court addressed at the hearing, it could appear that the “check the box form” was a dodge by the Debtor to try and slip out of the Chapter 7 and then (erroneously believing that she could) just dismiss the Chapter 13 case without the court being the wiser.

Before ordering the turnover, the court continues the hearing so that counsel for the Debtor can appear at the hearing and address what Debtor can do to diligently prosecute the case.

### **September 15, 2020 Hearing**

At the hearing, **XXXXX**

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 Turnover of Property filed by Michael D. McGranahan, the Chapter 7 Trustee, (“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 Turnover of Property is **XXXXXX**.

# FINAL RULINGS

3. [20-21498-E-7](#) **JOSHUA BLACKMAN** **MOTION FOR RELIEF FROM**  
[APN-1](#) **Thomas Amberg** **AUTOMATIC STAY**  
**8-5-20 [18]**

**TOYOTA MOTOR CREDIT  
CORPORATION VS.**

**Final Ruling:** No appearance at the September 15, 2020 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, and Office of the United States Trustee on August 5, 2020. By the court’s calculation, 40 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.**

Toyota Motor Credit Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2018 Toyota Highlander, VIN ending in 8515 (“Vehicle”). The moving party has provided the Declaration of Rahnae Spooner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Joshua Sidney Blackman (“Debtor”). Debtor is the Lessee of this Vehicle.

Movant argues Debtor has not made three (3) post-petition payments, with a total of \$1,864.11 in post-petition payments past due. Declaration, Dckt. 21.

## DEBTOR'S NON-OPPOSITION

Debtor filed a Non-Opposition on August 10, 2020. Dckt. 24.

## 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 \$34,925.26 (Declaration, Dckt. 21). No valuation is provided by either Debtor or Movant.

Debtor's Statement of Intention provides for the surrender of the Vehicle. Dckt. 31.

### 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.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by Toyota Motor Credit Corporation ("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 2018 Toyota Highlander (“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.

No other or additional relief is granted.