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WRITTEN DECISION - FOR PUBLICATION

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re	)	Case No. 07-03532-B7
	)	R/S No. GVC-1
MARY CATHERINE SCHWASS,	)	
	)	ORDER ON MOTION FOR
Debtor.	)	RELIEF FROM STAY
	)	
PACIFIC CAPITAL BANCORP,	)	
a national association dba	)	
SANTA BARBARA BANK & TRUST,	)	
	)	
Movant.	)	
v.	)	
	)	
MARY CATHERINE SCHWASS,	)	
	)	
Respondent.	)	

Debtor filed a timely statement of intention to reaffirm the debt secured by her car as required under 11 U.S.C. § 521(a)(2)(A).<sup>1</sup> Secured creditor has moved for relief from stay on the ground that Debtor has failed to timely perform such

<sup>1</sup> References to statutory sections herein refer to the Bankruptcy Code as set forth in title 11 of the United States Code unless otherwise noted.

1 intention as required under subsection 521(a)(2)(B). It is  
2 undisputed that the reaffirmation agreement required under  
3 § 524(c)(2) has not been filed with the Court. Debtor's counsel  
4 and secured creditor's counsel have each refused to prepare it -  
5 each contending that the burden lies with the other. The Court  
6 finds that the statutory scheme governing reaffirmation, and  
7 common sense place upon the secured creditor the obligation to  
8 prepare the reaffirmation agreement. Accordingly, the Court  
9 finds that Debtor has not failed to fulfill her obligations under  
10 § 521(a)(2) and hence relief from stay under § 362(h) is not  
11 warranted. The motion is denied.

12 This Court has subject matter jurisdiction pursuant to  
13 28 U.S.C. § 1334 and General Order No. 312-D of the United States  
14 District Court for the Southern District of California. This is  
15 a core proceeding under 28 U.S.C. § 157(b)(2)(A) & (G).  
16

#### 17 BACKGROUND

18 On July 2, 2007, Mary Catherine Schwass (Debtor) filed a  
19 petition commencing this chapter 7 case. Prior to the filing  
20 Debtor had borrowed money from Pacific Capital Bancorp dba Santa  
21 Barbara Bank & Trust (Movant) to purchase a 2001 Ford Explorer  
22 (Vehicle). Debtor granted Movant a security interest in the  
23 Vehicle to secured repayment of the loan.

24 With her petition Debtor filed a Statement of Intention  
25 which indicated that she intended to reaffirm her obligation to  
26 Movant. Counsel for Movant wrote to Debtor's counsel requesting

1 that he prepare the reaffirmation agreement. Debtor's counsel  
2 replied that Debtor had no obligation to prepare the agreement,  
3 but that he would do so for a fee payable by Movant. Movant  
4 replied that it was Debtor's responsibility, thus completing the  
5 stalemate. Thirty days elapsed from the date set for the first  
6 meeting of creditors with no reaffirmation agreement having been  
7 filed. Thereafter, Movant moved for relief from stay on the  
8 ground that Debtor did not timely follow through with her  
9 intention to reaffirm. A hearing was held and the Court took the  
10 matter under submission.

11 **DISCUSSION**

12 Movant seeks relief from stay under 11 U.S.C. § 362(h)(1)(B)  
13 which provides in relevant part:

14 (h)(1) In a case in which the debtor is an individual,  
15 the stay provided by subsection (a) is terminated with  
16 respect to personal property of the estate or of the  
debtor securing in whole or in part a claim... if the  
debtor fails within the applicable time set by section  
521(a)(2) --

17 (A) to file timely any statement of intention required  
18 under section 521(a)(2) with respect to such personal  
19 property or to indicate in such statement that the  
debtor will either surrender such personal property or  
20 retain it and, if retaining such personal property,  
either redeem such personal property pursuant to  
21 section 722, enter into an agreement of the kind  
specified in section 524(c) applicable to the debt  
22 secured by such personal property . . . ; and

23 (B) to take timely the action specified in such  
24 statement... unless such statement specifies the  
debtor's intention to reaffirm such debt on the  
25 original contract terms and the creditor refuses to  
agree to the reaffirmation on such terms.

26 ///

1 Section 521(a)(2)(A) requires that the statement of intention be  
2 filed within 30 days of the petition. As noted, Debtor included  
3 with her petition a statement of intention to reaffirm her debt  
4 to Movant, thus complying with subsection (A).

5 Section 521(a)(2)(B) provides that a debtor must perform her  
6 stated intention within 30 days after the first date set for the  
7 § 341(a) meeting of creditors. In this case the meeting was set  
8 for August 9, 2007. Thus, under § 521(a)(2)(B) Debtor was  
9 required to "perform" on her statement of intention to reaffirm  
10 on or before September 8, 2007. It is undisputed that no  
11 reaffirmation agreement has been filed in this case. Thus, the  
12 issue is whether performance under § 521(b)(2)(B) requires a  
13 debtor to prepare and file the reaffirmation agreement, or  
14 whether it is sufficient that a debtor state her intent to  
15 reaffirm and stand by ready to execute a reaffirmation agreement  
16 prepared by the secured creditor - in this case Movant.

17 Reaffirmation of debts and the agreements and disclosures  
18 required therefor is governed by 11 U.S.C. § 524(c) and (k). The  
19 Court is aware of no express provision or court decision  
20 dictating that one party or the other shall prepare the  
21 reaffirmation agreement. However, it appears clear to the Court  
22 from a review of the requirements of § 524(c) and (k) that the  
23 responsibility for preparing the agreement falls on the secured  
24 creditor.

25 Section 524(c)(2) provides that a reaffirmed debt is  
26 excepted from discharge only if "the debtor received the

1 disclosures described in subsection (k) at or before the time at  
2 which the debtor signed the agreement..." If the debtor is to  
3 receive the disclosures under subsection (k), it makes sense that  
4 the disclosures come from the secured party -- it would be  
5 nonsensical to have a debtor receive the disclosures from  
6 herself. It is of course possible for a debtor to receive the  
7 disclosures from her own counsel. However, debtors acting pro se  
8 are also able to reaffirm debts. See subsection 524(k)(5)(A)  
9 ("Certification of Debtor's Attorney (If Any)...").

10 Subsection (k) is even more convincing. First, the  
11 disclosure statement required under subsection (c) must contain  
12 the total amount of the debt to be reaffirmed including fees and  
13 costs incurred as of the date of the disclosure statement. See  
14 subsection 524(k)(3)(C). Obviously, this is information most  
15 readily supplied by the secured creditor. Second, the disclosure  
16 statement is replete with phrases such as "may obligate you,"  
17 "you have agreed," "your loan," "if you have questions," and "if  
18 you want to reaffirm." This is clearly language directed to the  
19 debtor. It would make no sense for a debtor to prepare such a  
20 disclosure statement with such disclosures to herself. Finally,  
21 the reaffirmation agreement as described in subsection (4) begins  
22 with the required phrase "I (we) agree to reaffirm" which clearly  
23 refers to the debtor(s). There is also a requirement for  
24 certification by debtor's attorney. Again, these are apparent  
25 indications that the reaffirmation agreement, along with the  
26 disclosure statement, are designed to be directed to, as opposed

1 to prepared by, the debtor. Since the only other party to the  
2 agreement is the secured creditor whose debt is to reaffirmed, it  
3 follows that the responsibility to prepare the documents falls on  
4 such secured creditor.

5 The Court is comfortable with this arrangement, since it is  
6 the secured creditor who stands to benefit from the reaffirmation  
7 of the debt. Further, under § 524(c) the reaffirmation agreement  
8 is enforceable only if, among other things, the debtor receives  
9 the prescribed disclosures on or before the time the debtor signs  
10 the agreement.

11 Thus, the Court holds that the statutory scheme and  
12 requirements for reaffirmation place upon the secured party whose  
13 debt is to be reaffirmed the obligation to prepare the  
14 reaffirmation agreement and the accompanying disclosure  
15 statement. The Court also holds that where, as in the case at  
16 hand, a debtor has timely filed a statement of intention to  
17 reaffirm, she complies with the requirement to "perform" such  
18 intention under subsection 521(a)(2)(B) by standing ready and  
19 willing to execute the reaffirmation agreement prepared by the  
20 secured creditor. Accordingly, the Court holds that in the case  
21 at hand relief from the automatic stay under § 362(h) is not  
22 warranted because Debtor has not failed to reaffirm. The same  
23 result may be reached by finding that Movant, by failing to  
24 provide a reaffirmation agreement for Debtor's signature, has  
25 refused to agree to reaffirmation on the original terms and thus  
26 relief is not warranted under § 362(h)(B).

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**CONCLUSION**

For the reasons set forth above the Court denies Movant's motion for relief from stay.

IT IS SO ORDERED.

DATED: NOV - 6 2007



PETER W. BOWIE, Chief Judge  
United States Bankruptcy Court