

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHOICE HOTELS INT'L, INC.,

No. 2:11-mc-0045 WBS AC

Plaintiff,

V.

ORDER TO SHOW CAUSE

DOSTEL CORP., ET AL.,

Defendant.

17 Pending before the court is plaintiff/judgment creditor Choice Hotel, Inc.’s (“plaintiff”)
18 motion for an order to show cause regarding civil contempt. ECF No. 24. Plaintiff contends that
19 defendant/judgment debtor Nilakshi Patel (“defendant”) has refused to comply with the court’s
20 February 12, 2014 Assignment Order entered by District Judge William B. Shubb. ECF No. 16
21 (“Assignment Order”). Plaintiff seeks an order holding defendant in contempt for failure to abide
22 by the Assignment Order. ECF No. 24. Under 28 U.S.C. § 636(b), the undersigned has the
23 authority to certify the facts of a party’s contempt to the district court and to issue an order
24 directing defendant to show cause before the district judge why she should not be held in
25 contempt. See Alcalde v. NAC Real Estate Invs. & Assignments, Inc., 580 F. Supp. 2d 969 (C.D.
26 Cal. Aug. 4, 2008). Upon review of the documents in support of the motion and good cause
27 appearing therefor, THE COURT FINDS AND ORDERS AS FOLLOWS:

1111

CERTIFIED FACTS

2 On March 31, 2009, plaintiff obtained a judgment against defendant in another district and
3 in the amount of \$86,668.53. ECF No. 24 at 2. The judgment has been registered in this district
4 for enforcement. *Id.* According to plaintiff, the judgment total as of December 4, 2013 is
5 \$89,134.31. *Id.* Defendant did not agree to satisfy the judgment and on October 17, 2013
6 plaintiff sought an assignment order to enforce the judgment from defendant's commercial real
7 estate activities. ECF No. 11.

8 On January 3, 2014, the magistrate judge assigned to this action issued findings and
9 recommendations recommending the motion for assignment order be granted and relief granted as
10 follows:

11 The right of Defendant/Judgment Debtor Nilakshi Patel to payment
12 of money due or to become due from their business activities as the
13 landlord/owner of that certain commercial real property, and
14 improvements thereon, commonly known as "Universal Plaza," and
15 located at 4400 47th Avenue, Sacramento, California 95824 APN
16 039-0052-048, be assigned to Plaintiff/Judgment Creditor Choice
Hotels International Inc. with payment to "Aires Law Trust
Account fbo Choice Hotels International Inc.," at 180 Newport
Center Drive, Suite 260, Newport Beach, California 92660, to the
extent necessary to satisfy the judgment entered in this action in
full, which as of December 4, 2013, is \$89,134.31.

17 ECF No. 14. On February 12, 2014, the findings and recommendations were adopted in full.
18 ECF No. 16. Defendant/judgment debtor Nilakshi Patel was served with the order on February
19 12, 2014. See ECF No. 17.

20 On May 12, 2014, plaintiff filed a motion for issuance of an order to show cause regarding
21 contempt for defendant's failure to comply with the court's Assignment Order directing rents
22 from the property at issue be paid to the judgment creditor. ECF No. 18.

23 On June 27, 2014, the undersigned issued an order and order to show cause ordering
24 defendant to show cause in writing within twenty-one days from the issuance of the order why
25 she should not be punished for contempt for failure to abide by Judge Shubb's February 12, 2014
26 Assignment Order. ECF No. 21. Defendant was served by mail with the court's order and order
27 to show cause.

28 || //

1 The time for responding to the court's order to show cause has passed and defendant has
2 not responded to the court's order or otherwise appeared in this action.

3 **FURTHER CONTEMPT PROCEEDINGS ARE WARRANTED**

4 On November 3, 2014, plaintiff renewed its motion for issuance of an order to show
5 cause, arguing that defendant has failed to abide by the court's orders. ECF No. 24. Plaintiff
6 argues, *inter alia*, that

7 [N]o rent from the tenants occupying the Real Property has been
8 paid over by Defendant/Judgment Debtor Nilakshi Patel, [n]o accounting has been rendered by Defendant/Judgment Debtor
9 Nilakshi Patel, . . . [and] [n]o indication has been given that rent payments by the tenants have universally ceased[.]

10 *Id.* at 2.

11 Magistrate judges must refer contempt proceedings to district judges. See 28 U.S.C.
12 § 636(e); Bingman v. Ward, 100 F.3d 653, 656-57 (9th Cir. 1996). A magistrate judge may
13 investigate whether further contempt proceedings are warranted and, if so, may certify such facts
14 to a district judge and issue an order directing a party (or counsel) to show cause before the
15 district judge why he should not be held in contempt.. 28 U.S.C. § 636(e); see also Alcalde, 580
16 F. Supp. 2d at 971 (“Contempt proceedings are instituted by the issuance of an Order to Show
17 Cause [] why a contempt citation should not issue and a notice of a date for the hearing.”) (citing
18 Schwarzer, Tashima & Wagstaffe, Federal Civil Procedure Before Trial at ¶ 11:2316).

19 Where contempt is sought to compensate an aggrieved party for failure of an adverse
20 party to comply with court orders, the asserted contempt is civil in nature. United States v. Asay,
21 614 F.2d 655, 659 (9th Cir. 1980).¹ Civil contempt sanctions are intended to coerce compliance.
22 Int'l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 827 (1994). To find civil
23 contempt: “. . . the court need only (1) have entered a clear and unambiguous order, (2) find it
24 established by clear and convincing evidence that the order was not complied with, and (3) find
25 that the alleged contemnor has not clearly established his inability to comply with the terms of the
26 order.” Huber v. Marine Midland Bank, 51 F.3d 5, 10 (2d Cir. 1995). There need not be a willful

27 ¹ On the other hand, where contempt is imposed to vindicate the authority of the court following
28 a completed act of disobedience, and the contemnor has no opportunity to purge himself of
contempt, the contempt is criminal in nature. Bingman, 100 F.3d at 655-56.

1 violation of the order in order for the court to find civil contempt. Asay, 614 F.2d 661; see also
2 United States v. Laurins, 857 F.2d 529, 534 (9th Cir. 1988).

3 As demonstrated by the facts certified above, it appears that defendant has wilfully
4 violated the court's Assignment Order assigning her rights to payment of money from her
5 business as the landlord/owner of the "Universal Plaza" commercial property to plaintiff to satisfy
6 the judgment. The Assignment Order was clear and unambiguous, and clear and convincing
7 evidence establishes that defendant has wilfully failed to comply with the order. Defendant was
8 served by mail with the court's Assignment Order and there is no indication that defendant was
9 unable to comply with the order.

10 For these reasons, further contempt proceedings are warranted.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. Plaintiff/judgment creditor's motion for the issuance of an order to show cause, ECF
13 No. 24, is granted;

14 2. Defendant/judgment debtor is hereby ordered to appear and show cause why she should
15 not be found in contempt based upon the facts this court has certified;

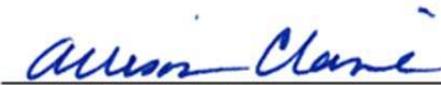
16 3. A contempt hearing is set before Judge Shubb on December 15, 2014 at 2:00 p.m.;

17 4. The Clerk of the Court shall serve a copy of this order on defendant/judgment creditor
18 at the following addresses:

19 Nilakshi Patel, 4518 Maple Plain Avenue, Elk Grove, CA 95758

20 Nilakshi Patel, 4400 47th Avenue, Suite 104, Sacramento, CA 95824

21 DATED: November 4, 2014

22 
23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE