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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE KERN  
COUNTY ELECTRICAL PENSION FUND,  
et al.,  
  
Plaintiff,  
  
vs.  
  
CHRISTOPHER BURGONI, et. al,  
  
Defendants.

Case No. 1:08-cv-00498 LJO JLT  
  
ORDER AUTHORIZING PROCESS  
SERVER TO LEVY EXECUTION  
PURSUANT TO CALIFORNIA CODE OF  
CIVIL PROCEDURE § 699.080  
  
(Docs. 78-79).

The Board of Trustees of the Kern County Electrical Pension Fund, Board of Trustees of the Kern County Electrical Workers Health & Welfare Trust and Board of Trustees of the Kern Court Electrical Journeyman and Apprentice Training Trust (“Plaintiffs”) sought entry of default judgment against defendants Christopher Burgoni (“Burgoni”) and Tadoc Enterprises (“Tadoc”) on April 27, 2012. (Doc. 64).

On June 14, 2012, Magistrate Judge Thurston recommended that Plaintiffs’ motion for entry of default judgment be granted. (Doc. 69). The Order Adopting the Findings and Recommendations was subsequently issued on July 3, 2012. (Doc. 70). Judgment in favor of Plaintiffs was issued on July 3, 2012 as well.

1 On September 17, 2012, Plaintiff filed an ex parte application for an order authorizing a  
2 process server to levy execution pursuant to California Code of Civil Procedure § 699.080.

### 3 DISCUSSION

4 The execution of final judgments is governed by Rule 69(a) of the Federal Rules of Civil  
5 Procedure. Rule 69(a) provides:

- 6 (1) Money Judgment; Applicable Procedure. A money judgment is enforced by a writ of  
7 execution, unless the court directs otherwise. The procedure on execution—and in  
8 proceedings supplementary to and in aid of judgment or execution—must accord with the  
9 procedure of the state where the court is located, but a federal statute governs to the  
10 extent it applies,  
11 (2) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a  
12 successor in interest whose interest appears of record may obtain discovery from any  
13 person-including the judgment debtor-as provided in these rules or by the procedure of  
14 the state where the court is located.

15 Fed.R.Civ.P. 69(a). Pursuant to Rule 69(a), post-judgment enforcement proceedings must comply  
16 with California law. Credit Suisse v. U.S. Dist. Court for Cent. Dist. of California, 130 F.3d 1342,  
17 1344 (9th Cir.1997); Hilao v. Estate of Marcos, 95 F.3d 848, 850 (9th Cir.1996).

18 Under California law, a registered process server may levy under a writ of execution on  
19 property specified in California Code of Civil Procedure § 699.080(a). A registered process server  
20 is a person registered as a process server pursuant to the Business and Professions Code. *See*  
21 Cal.Civ.Proc.Code § 481.250 (citing Cal. Bus. & Prof.Code §§ 22350 to 22360). This authority is  
22 limited to cases where the levy does not involve the possibility of taking immediate possession of  
23 the property. California Civil Procedure Code § 699.080 provides:

24 (b) Before levying under the writ of execution, the registered process server shall  
25 deposit a copy of the writ with the levying officer and pay the fee provided by Section  
26 26721 of the Government Code.

27 (c) If a registered process server levies on property pursuant to subdivision (a), the  
28 registered process server shall do both of the following:

(1) Comply with the applicable levy, posting, and service provisions of Article 4  
(commencing with Section 700.010).

(2) Request any third person served to give a garnishee's memorandum to the levying  
officer in compliance with Section 701.030 on a form provided by the registered  
process server.

1 (d) Within five court days after levy under this section, all of the following shall be  
2 filed with the levying officer:

3 (1) The writ of execution.

4 (2) A proof of service by the registered process server stating the manner of levy  
5 performed.

6 (3) Proof of service of the copy of the writ and notice of levy on other persons, as  
7 required by Article 4 (commencing with Section 700.010).

8 (4) Instructions in writing, as required by the provisions of Section 687.010.

9 (e) If the fee provided by Section 26721 of the Government Code has been paid, the  
10 levying officer shall perform all other duties under the writ as if the levying officer  
11 had levied under the writ and shall return the writ to the court. If the registered  
12 process server does not comply with subdivisions (b) and (d), the levy is ineffective  
13 and the levying officer is not required to perform any duties under the writ and may  
14 issue a release for any property sought to be levied upon.

15 (f) The fee for services of a registered process server under this section shall be  
16 allowed as a recoverable cost pursuant to Section 1033.5.

17 (g) A registered process server may levy more than once under the same writ of  
18 execution, provided that the writ is still valid.

19 Cal.Code Civ.Proc. § 699.080.

20 The Court has reviewed the documents filed by Plaintiff. (Doc. 78 and 79). The Court  
21 finds that Janney & Janney Attorney Service, Inc. and Jackie R. Brazeal of Active Legal Process  
22 Solutions are registered process servers, having filed a certificate of registration in Los Angeles  
23 and Kern counties. (Doc. 79). Based on the declaration of Plaintiff's attorney, the Court finds  
24 that the interests of justice would be served by relieving the United States Marshal from  
25 effectuating certain types of services necessary to effectuate collection of the judgment in this  
26 action. The Court also notes that the use of a process server is routine in the enforcement of  
27 judgments and is authorized by California law.

28 **ORDER**

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff may employ the services of Janney & Janney Attorney Service and Jackie R.  
Brazeal of Active Legal Process Solutions to perform the duties and responsibilities of levying  
officer as defined under California Code of Civil Procedure § 699.080; and

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2. Janney & Janney Attorney Service and Jackie R. Brazeal of Active Legal Process Solutions, SHALL comply with the requirements of the California Code of Civil Procedure concerning the enforcement of judgments, including California Code of Civil Procedure § 699.080.

IT IS SO ORDERED.

Dated: September 24, 2012

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE