

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

LA-KEBBIA WILSON, and TERI
McCADA,

CASE NO. 1:09-cv-00887-LJO-SKO

Plaintiffs,

V.

**ORDER FOR APPEARANCE AND
EXAMINATION OF JUDGMENT
DEBTOR TERI McCADA**

CITY OF FRESNO, et al.,

(Doc. 92)

Defendants.

1. INTRODUCTION

On December March 29, 2011, summary judgment was granted against Plaintiff Terri McCada and in favor of Defendant City of Fresno, and judgment was issued accordingly. (Doc. 51, 52.) A bill of costs of was submitted by the City of Fresno against Plaintiff Terri McCada, and the Court ordered \$4,491.47 taxed as costs. (Docs. 58, 85.)¹ An abstract of Judgment was issued against Terri McCada on December 10, 2013, for \$4,491.47.

On April 24, 2014, Defendant City of Fresno filed an application and request for an order for the appearance and examination of judgment debtor Teri McCada. (Doc. 92.) Accordingly,

¹ The costs taxed by the Court were amended on November 8, 2013. (Doc. 85.)

1 Teri McCada is ordered to appear personally on **Wednesday, June 11, 2014, at 12:00 p.m.**
2 **(noon) in Courtroom 7 of the United States District Courthouse, located at 2500 Tulare**
3 **Street, Fresno, California, 93721**, to furnish information to aid in enforcement of a money
4 judgment by answering questions about the Defendant/judgment debtor's real and personal
5 property.²

6 **II. DISCUSSION**

7 Federal Rule of Civil Procedure 69 governs enforcement of judgment proceedings in
8 federal courts. *Hilao v. Estate of Marcos*, 95 F.3d 848, 851 (9th Cir. 1996). Rule 69(a)
9 provides:

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

16 Fed. R. Civ. P. 69(a)(1)-(2).

17 Judgment debtor proceedings under California law "permit the judgment creditor to
18 examine the judgment debtor, or third persons who have property of or are indebted to the
19 judgment debtor, in order to discover property and apply it toward the satisfaction of the money
20 judgment." *Imperial Bank v. Pim Elec., Inc.*, 33 Cal. App. 4th 540, 546-47; *see also* Cal. Civ.
21 Proc. Code §§ 708.110-708.205. All assets of a judgment debtor are subject to enforcement.
22 Cal. Civ. Proc. Code § 695.010 (a).

23 California Code of Civil Procedure § 708.110 provides in relevant part:

24 (a) The judgment creditor may apply to the proper court for an order requiring
25 the judgment debtor to appear before the court, or before a referee appointed by

27 ² Defendant City of Fresno set the debtor examination hearing for Wednesday, June, 11 2014, at 9:30 a.m.; however,
28 a calendar conflict requires that the time for the appearance be modified to **12:00 p.m. (noon)**.

1 the court, at a time and place specified in the order, to furnish information to aid
2 in enforcement of the money judgment.

3 (b) If the judgment creditor has not caused the judgment debtor to be examined
4 under this section during the preceding 120 days, the court shall make an order
5 upon ex parte application of the judgment creditor.

6 (c) If the judgment creditor has caused the judgment debtor to be examined under
7 this section during the preceding 120 days, the court shall make the order if the
8 judgment creditor by affidavit or otherwise shows good cause for the order. The
9 application shall be made on noticed motion if the court so directs or a court rule
10 so requires. Otherwise, it may be made ex parte.

11 (d) The judgment creditor shall personally serve a copy of the order on the
12 judgment debtor not less than 10 days before the date set for examination.
13 Service shall be made in the manner specified in Section 145.10. Service of the
14 order creates a lien on the personal property of the judgment debtor for a period of
15 one year from the date of the order unless extended or sooner terminated by the
16 court.

17 (e) The order shall contain the following statement in 14-point boldface type if
18 printed or in capital letters if typed: "NOTICE TO JUDGMENT DEBTOR. If
19 you fail to appear at the time and place specified in this order, you may be subject
20 to arrest and punishment for contempt of court and the court may make an order
21 requiring you to pay the reasonable attorney's fees incurred by the judgment
22 creditor in this proceeding."

23 Cal Civ. Proc. Code § 708.110(a)-(e).

24 California Code of Civil Procedure § 708.160(a) also provides that "[e]xcept as otherwise
25 provided in this section, the proper court for examination of a person under this article is the
26 court in which the money judgment is entered." Cal. Civ. Proc. Code § 708.160(a). Here,
27 judgment was entered by this Court on March 29, 2011. (Doc. 29.)

28 As such, the City of Fresno's application sets forth the showing required by Federal Rule
29 of Civil Procedure 69(a)(2) and the applicable provisions of the California Code of Civil
30 Procedure §§ 708.110 and 708.160.

23 III. CONCLUSION AND ORDER

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. Defendant/judgment debtor Teri McCada shall appear personally on **Wednesday,**
26 **June 11, 2014, at 12:00 p.m. (noon) in Courtroom 7 of the United States**
27 **District Courthouse, located at 2500 Tulare Street, Fresno, California, 93721,**

1 to furnish information to aid in enforcement of a money judgment by answering
2 questions about the Defendant/ judgment debtor's real and personal property;

3 2. Defendant/judgment creditor must serve this order upon Plaintiff/judgment debtor
4 **Teri McCada personally not less than ten (10) days before the date set for the examination and must file a certificate of such service with the Court;** and
5
6 3. If Defendant/judgment creditor is unable to effectuate personal service on
7 Plaintiff/judgment debtor within the required time, Defendant/judgment creditor
8 must file notice with the Court by **no later than ten (10) days** before the date set
9 for the examination and inform the Court that the examination hearing must be
10 taken off calendar.

11 **NOTICE TO JUDGMENT DEBTOR: IF YOU FAIL TO APPEAR AT**
12 **THE TIME AND PLACE SPECIFIED IN THIS ORDER, YOU MAY BE**
13 **SUBJECT TO ARREST AND PUNISHMENT FOR CONTEMPT OF**
14 **COURT AND THE COURT MAY MAKE AN ORDER REQUIRING YOU**
15 **TO PAY THE REASONABLE ATTORNEY'S FEES INCURRED BY THE**
16 **JUDGMENT CREDITOR IN THIS PROCEEDING.**³

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19 IT IS SO ORDERED.

20 Dated: April 29, 2014

21 /s/ Sheila K. Oberto
22 UNITED STATES MAGISTRATE JUDGE

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27 ³ This notice is furnished pursuant to California Code of Civil Procedure § 708.110(e).
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