

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

CHARANJIT BATTH, et al.,

CASE NO. 1:11-cv-01806-AWI-SKO

Plaintiffs,

V.

**ORDER FOR APPEARANCE AND
EXAMINATION OF JUDGMENT
DEBTOR LYNDSEY C. DOWNS**

MARKET 52, INC., et al.,

Defendants.

(Docs. 29, 31)

I. INTRODUCTION

On December 15, 2011, Plaintiffs Charanjit Bath and Gagan Bath ("Plaintiffs") and Defendants Market 52, Inc. ("Market 52") Jerald Daniel Downs ("J. Downs"), and Lyndsey C. Downs ("L. Downs" or collectively "Defendants") filed a Stipulation and Proposed Order for Entry of Judgment and Dissolution of Preliminary Injunction. (Doc. 20.) The Court approved the parties' stipulation on December 16, 2011, and judgment was entered against Defendants joint and severally in the total sum of \$178,936.25. (Docs. 22, 23.)

On January 11, 2012, Plaintiffs requested issuance of an abstract of judgment against Defendants, which was issued on January 12, 2012. (Doc. 24, 25.) On January 27, 2012, Plaintiffs requested the issuance of a writ of execution. (Doc. 26.) On January 30, 2012, a

1 Notice of Stay of Proceedings was filed by Market 52, indicating that it had filed for bankruptcy.
2 (Doc. 27.) On January 31, 2012, the Court issued the writ of execution against Defendants
3 J. Downs and L. Downs, individually. (Doc. 28.)

4 On May 1, 2013, Plaintiffs filed applications and requests for an order for the appearance
5 and examination of judgment debtors J. Downs and L. Downs. (Docs. 29-31.) Accordingly, L.
6 Downs is ordered to appear personally on **Wednesday, July 17, 2013, at 9:30 a.m. in**
7 **Courtroom 7 of the United States District Courthouse, located at 2500 Tulare Street,**
8 **Fresno, California, 93721**, to furnish information to aid in enforcement of a money judgment by
9 answering questions about the Defendant/judgment debtor's real and personal property.¹

10 **II. DISCUSSION**

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

14 (1) **Money Judgment; Applicable Procedure.** A money judgment is enforced
15 by a writ of execution, unless the court directs otherwise. The procedure on
16 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.
17 (2) **Obtaining Discovery.** In aid of the judgment or execution, the judgment
18 creditor or a successor in interest whose interest appears of record may obtain
discovery from any person--including the judgment debtor--as provided in
19 these rules or by the procedure of the state where the court is located.

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

21 Judgment debtor proceedings under California law "permit the judgment creditor to
22 examine the judgment debtor, or third persons who have property of or are indebted to the
23 judgment debtor, in order to discover property and apply it toward the satisfaction of the money
24 judgment." *Imperial Bank v. Pim Elec., Inc.*, 33 Cal. App. 4th 540, 546-47; *see also* Cal. Civ.
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26 _____
27 ¹ Plaintiffs had set the debtor examination hearing for Thursday, July 11, 2013; however, as Magistrate Judge Sheila
28 K. Oberto holds law and motion calendars on Wednesdays, the hearing is being reset to the following Wednesday,
July 17, 2013.

1 Proc. Code §§ 708.110-708.205. All assets of a judgment debtor are subject to enforcement.
2 Cal. Civ. Proc. Code § 695.010 (a).

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

4 (a) The judgment creditor may apply to the proper court for an order requiring
5 the judgment debtor to appear before the court, or before a referee appointed by
6 the court, at a time and place specified in the order, to furnish information to aid
in enforcement of the money judgment.

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

9 (c) If the judgment creditor has caused the judgment debtor to be examined under
10 this section during the preceding 120 days, the court shall make the order if the
judgment creditor by affidavit or otherwise shows good cause for the order. The
application shall be made on noticed motion if the court so directs or a court rule
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
order creates a lien on the personal property of the judgment debtor for a period of
one year from the date of the order unless extended or sooner terminated by the
court.

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

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

20 California Code of Civil Procedure § 708.160(a) also provides that "[e]xcept as otherwise
21 provided in this section, the proper court for examination of a person under this article is the
22 court in which the money judgment is entered." Cal. Civ. Proc. Code § 708.160(a). Here,
23 judgment was entered by this Court on December 16, 2011. (Docs. 22, 23.)

24 As such, Plaintiffs' application sets forth the showing required by Federal Rule of Civil
25 Procedure 69(a)(2) and the applicable provisions of the California Code of Civil Procedure
26 §§ 708.110 and 708.160.

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III. CONCLUSION AND ORDER

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Defendant/judgment debtor Lyndsey C. Downs shall appear personally on
4 **Wednesday, July 17, 2013, at 9:30 a.m. in Courtroom 7 of the United States**
5 **District Courthouse, located at 2500 Tulare Street, Fresno, California, 93721,**
6 to furnish information to aid in enforcement of a money judgment by answering
7 questions about the Defendant/ judgment debtor's real and person property;

8 2. Plaintiffs/judgment creditors must serve this order upon Defendant/judgment
9 debtor Lyndsey C. Downs **personally not less than ten (10) days before the**
10 **date set for the examination and must file a certificate of such service with**
11 **the Court;** and

12 3. If Plaintiffs/judgment creditors are unable to effectuate personal service on
13 Defendant/judgment debtor Lyndsey C. Downs within the required time,
14 Plaintiffs/judgment creditors must file notice with the Court by **no later than**
15 **nine (9) days** before the date set for the examination and inform the Court that the
16 examination hearing must be taken off calendar.

17 **NOTICE TO JUDGMENT DEBTOR. IF YOU FAIL TO APPEAR AT**
18 **THE TIME AND PLACE SPECIFIED IN THIS ORDER, YOU MAY BE**
19 **SUBJECT TO ARREST AND PUNISHMENT FOR CONTEMPT OF**
20 **COURT AND THE COURT MAY MAKE AN ORDER REQUIRING YOU**
21 **TO PAY THE REASONABLE ATTORNEY'S FEES INCURRED BY THE**

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1 **JUDGMENT CREDITOR IN THIS PROCEEDING.²**
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5 IT IS SO ORDERED.
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7 Dated: May 31, 2013

8 /s/ Sheila K. Oberto
9 UNITED STATES MAGISTRATE JUDGE
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27 ² This notice is furnished pursuant to California Code of Civil Procedure § 708.110(e).
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