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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

XEROX CORPORATION,
Plaintiff,
v.
SIMPLY SMASHING, INC.,
Defendant.

Case No. 1:13 -cv-00395-LJO-SAB
ORDER FOR APPEARANCE AND
EXAMINATION OF JUDGMENT DEBTOR
TIMOTHY R. FRUEHE
(ECF No. 22)

I.
INTRODUCTION

Plaintiff Xerox Corporation filed this breach of contract action against Defendant Simply Smashing on March 18, 2013. (ECF No. 1.) On April 23, 2013, Plaintiff filed a request for entry of default against Defendant Simply Smashing, Inc. (ECF No. 7.) On April 25, 2013, a Clerk's entry of default was filed. (ECF No. 8.) On May 1, 2013, Plaintiff filed a motion for default judgment. (ECF No. 10.) On June 24, 2013, the Magistrate Judge filed a findings and recommendation recommending that default judgment be entered. (ECF No. 19.) On July 12, 2013, an order adopting the findings and recommendation issued and judgment was entered against Defendant Simply Smashing in the amount of \$411,461.21. (ECF No. 21.) On December 3, 2013, Plaintiff filed a proposed order for Timothy R. Fruehe to appear for examination. (ECF No. 22.)

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II.
DISCUSSION

Pursuant to Federal Rule of Civil Procedure 69(a)(1), "[t]he procedure on 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." In turn, California Code of Civil Procedure § 708.110 provides, in relevant part:

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

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

(c) If the judgment creditor has caused the judgment debtor to be examined under 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.

(d) The judgment creditor shall personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for the examination. Service shall be made in the manner specified in Section 415.10. 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.

(e) The order shall contain the following statement in 14-point boldface type if printed or in capital letters if typed: "NOTICE TO JUDGMENT DEBTOR. If 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."

Cal Civ. Proc. Code § 708.110(a)-(e).

California Code of Civil Procedure § 708.160(b) also provides that "[a] person sought to be examined may not be required to attend an examination before a court located outside the county in which the person resides or has a place of business unless the distance from the person's place of residence or place of business to the place of examination is less than 150 miles." Cal. Civ. Proc. Code § 708.160(b).

The Court finds that Plaintiff has satisfied the requirement of 28 U.S.C. § 1963 because

1 judgment in the amount of \$411,461.21 has been entered by this Court. Additionally, Plaintiff's
2 application sets forth the showing required by Federal Rule of Civil Procedure 69(a)(2) and the
3 applicable provisions of the California Code of Civil Procedure §§ 708.110 and 708.160.

4 **III.**

5 **CONCLUSION**

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Defendant/judgment debtor Timothy R. Fruehe shall appear personally on
8 Wednesday, February 19, 2014, at 9:30 a.m. in Courtroom 9 of the United States
9 District Courthouse, located at 2500 Tulare Street, Fresno, California, 93721, to
10 furnish information to aid in enforcement of a money judgment by answering
11 questions about the Defendant/judgment debtor's real and personal property; and
12 2. Plaintiff/judgment creditor must serve this order upon Defendant/judgment debtor
13 Timothy R. Fruehe personally not less than ten (10) days before the date set for the
14 examination and must file a certificate of such service with the Court.

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

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21 IT IS SO ORDERED.

22 Dated: December 4, 2013

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25 UNITED STATES MAGISTRATE JUDGE
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