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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA

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10 NATIVIDAD GUTIERREZ,

Case No. 1:13-cv-00642-LJO-SKO

11 Plaintiff,

**ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S MOTION TO  
ENFORCE JUDGMENT**

12 v.

13 VANTIA PROPERTIES, LLC, et al.,

(Doc. No. 47)

14 Defendants.  
15 \_\_\_\_\_/

16  
17 **I. INTRODUCTION**

18 On June 16, 2014, the Court entered default judgment against Defendant Vantia Properties,  
19 LLC in the amount of \$12,157.05. (Docs. 43, 44.) On November 17, 2014, Plaintiff filed a  
20 motion to enforce the judgment. (Doc. 47.) The hearing on Plaintiff's motion is set for January  
21 14, 2015. No opposition was filed. The Court has reviewed Plaintiff's motion and all supporting  
22 documentation and finds this matter suitable for decision without argument pursuant to Local Rule  
23 230(g). Thus, the January 14, 2015, hearing is VACATED. For the reasons set forth below,  
24 Plaintiff's motion is DENIED WITHOUT PREJUDICE.

25 **II. BACKGROUND**

26 On May 2, 2013, Plaintiff filed a complaint pursuant to Title III of the Americans with  
27 Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213; the California Unruh Act, California Civil  
28 Code § 51 *et seq.*; and California Health & Safety Code §§ 19955, 19959. (Doc. 1.) The

1 complaint sought an award of statutory damages, prejudgment interest on the damages, costs of  
2 suit, attorney's fees, and declaratory and injunctive relief. (Doc. 1.) Plaintiff alleged that he  
3 requires the use of a wheelchair when traveling in public (Doc. 1, ¶ 8), and the property that is the  
4 subject of this suit, Taqueria San Juan (the "Property"), presents numerous architectural barriers  
5 that interfered with his ability to use and enjoy the goods, services, privileges, and  
6 accommodations offered at the facility (Doc. 1, ¶ 10). Defendant Vantia Properties, LLC  
7 ("Vantia") was served with the complaint on May 20, 2013, and failed to file a responsive  
8 pleading. (See Doc. 10). Vantia's default was entered by the Clerk of Court on June 27, 2013,  
9 and judgment was entered against Vantia on June 16, 2014. (Docs. 12, 43, 44.)

10 On November 11, 2014, Plaintiff filed a motion to enforce the judgment against Vantia in  
11 the form of an assignment of rents order requiring Vantia's tenants at certain properties to pay their  
12 rents to Plaintiff as they become due until all amounts due are paid in full. (Doc. 47.) It is this  
13 motion that is pending before the Court.

### 14 III. DISCUSSION

15 A federal district court has the authority to enforce its money judgments in accordance  
16 with the practice and procedure of the state in which it sits. Fed. R. Civ. Pro. 69(a); *Paul Revere*  
17 *Ins. Grp. v. United States*, 500 F.3d 957, 960 (9th Cir. 2007). An assignment order under  
18 California Code of Civil Procedure § 708.510 "is a court order assigning to the judgment creditor .  
19 . . the debtor's right to payments due from a third person." Rutter Group, California Practice  
20 Guide-Enforcing Judgments and Debts § 6.1422.5 (2008) ("Rutter Group"). California Code of  
21 Civil Procedure § 708.510 provides in relevant part:

22  
23 Except as otherwise provided by law, upon application of the judgment creditor on  
24 noticed motion, the court may order the judgment debtor to assign to the judgment  
25 creditor . . . all or part of a right to payment due to or to become due, whether or  
26 not the right is conditioned on future developments including but not limited to the  
27 following types of payments: (1) Wages due from the federal government that are  
28 not subject to withholding under an earnings withholding order. (2) Rents. (3)  
Commissions. (4) Royalties. (5) Payments due from a patent or copyright. (6)  
Insurance policy loan value.

1 Cal. Code Civ. Pro. § 708.510(a). This section also provides that "notice of the motion shall be  
2 served on the judgment debtor. Service shall be made personally or by mail." Cal. Code Civ. Pro.  
3 § 708.510(b).

4 Plaintiff seeks an enforcement order requiring Vantia's tenants to pay their rental or lease  
5 payments directly to Plaintiff. In support of Plaintiff's motion, Plaintiff's counsel filed a  
6 declaration stating the following in relevant part:

7  
8 3. I have researched the properties owned by Vantia using various public  
9 records search devices and have determined that Vantia owns the following  
properties as of November 13, 2014:

- 10 a) 121 North Maple Avenue in Fresno, California 93702  
11 b) 133 North Maple Avenue in Fresno, California 93702  
12 c) 137 North Maple Avenue in Fresno, California 93702  
d) 5191 East Tulare Avenue in Fresno, California 93702

13 Based upon my research, each of the above addresses represents a different tenant  
14 to which Vantia is renting or leasing its real property.

15 4. Although I have been able to verify with a high level of certainty that  
16 Vantia in fact[] owns these properties, I have not been able to confirm with the  
17 same degree of certainty the names of the tenants located at each address to whom  
Vantia rents or leases the property.

18 (Doc. 47-2, Moore Decl., ¶¶ 3-4.)

19 The declaration of Plaintiff's counsel – Ms. Moore – is the only evidence offered to support  
20 the motion, and it is insufficient to warrant an order for an assignment of rents for a number of  
21 reasons. First, Ms. Moore's statement alone is insufficient to show that Vantia owns the properties  
22 listed in counsel's declaration. Plaintiff must present evidence of such ownership.

23 Second, Plaintiff has provided no evidence the listed properties are in fact rented or leased  
24 by Vantia to third parties. An assignment order that is properly served has the effect of rendering  
25 the third party *personally* liable to the judgment creditor. Cal. Code of Civ. Pro. §§ 701.020,  
26 701.050. Without evidence showing third-parties are obligated to pay rent to Vantia, the Court  
27 has no basis to assign anything to Plaintiff, obligating third-parties. Moreover, Plaintiff has not  
28 identified these purported third party lessees by name.

1 Third, assuming the premises are actually rented or leased by tenants who are obligated to  
2 pay Vantia rent, there is no evidence presented showing the *amount* of such rent or lease  
3 payments. This is critical to an assignment order because the Court may only order the  
4 assignment of property to the extent necessary to satisfy the money judgment. Cal. Code Civ. Pro.  
5 § 708.510(d). Without a rental or lease agreement showing the amount a tenant owes to Vantia,  
6 the assignment order Plaintiff requests is essential one for an unknown amount. For example, if  
7 each of the properties listed above had a tenant who paid \$4,000 per month in rent, the assignment  
8 order Plaintiff seeks would result in an assignment of \$16,000 to Plaintiff, which is more than the  
9 judgment amount. The Court cannot issue an assignment order in the abstract.

10 Finally, no assignment order is effective until the third-party obligor receives notice of it.  
11 Cal. Code Civ. Pro. § 708.540. As Plaintiff has presented no evidence of the identity of the  
12 purported tenants or the address where they may be provided with notice of the order, Plaintiff has  
13 not shown that notice of the assignment order would be effective.

#### 14 IV. CONCLUSION AND ORDER

15 For the reasons set forth above, there is insufficient evidence to issue the assignment order  
16 Plaintiff seeks. Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion to enforce the  
17 judgment is DENIED WITHOUT PREJUDICE.

18  
19 IT IS SO ORDERED.

20 Dated: January 13, 2015

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE