

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONALD MOORE,

Plaintiff,

v.

CHASE, INC., d/b/a SLATER SHELL,

Defendant.

Case No. 1:14-cv-01178-SKO

**ORDER FOR APPEARANCE AND
EXAMINATION OF JUDGMENT
DEBTOR CHASE, INC d/b/a SLATER
SHELL**

(Doc. 132)

I. INTRODUCTION

On March 7, 2016, judgment was entered against Defendant Chase, Inc. d/b/a Slater Shell, and in favor of Plaintiff Ronald Moore, and judgment was issued accordingly. (Docs. 101; 102.) A request for issuance of an abstract of judgment was submitted by Plaintiff against Defendant Chase, Inc., in the amount of \$78,002.71.¹ (Doc. 119.) An Abstract of Judgment was issued against Chase, Inc., on July 27, 2016, and August 1, 2016, for \$78,002.71. (Docs. 120;123.)

On August 25, 2016, Plaintiff filed an application and request for an order for the appearance and examination of judgment debtor Chase, Inc. (Doc. 132.) For the reasons set forth below, one or more officers, directors, managing agents, or other persons who are familiar with its

¹ This amount is comprised of (a) costs in the amount of \$4,069.15 (Doc. 115) and \$7,178.56 (Doc. 118); and (b) attorney's fees in the amount of \$66,755.00 (Doc. 118).

1 property and debts of judgment debtor Chase, Inc., are ordered to appear personally on Monday,
2 October 24, 2016, at 2:00 p.m. in Courtroom 7 of the United States District Courthouse, located at
3 2500 Tulare 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 property.

5 **II. DISCUSSION**

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

8 (1) Money Judgment; Applicable Procedure. A money judgment is enforced
9 by a writ of execution, unless the court directs otherwise. The procedure on
10 execution – and in proceedings supplementary to and in aid of judgment or
11 execution – must accord with the procedure of the state where the court is located,
but a federal statute governs to the extent it applies.

12 (2) Obtaining Discovery. In aid of the judgment or execution, the judgment
13 creditor or a successor in interest whose interest appears of record may obtain
14 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.

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

16 Judgment debtor proceedings under California law “permit the judgment creditor to
17 examine the judgment debtor, or third persons who have property of or are indebted to the
18 judgment debtor, in order to discover property and apply it toward the satisfaction of the money
19 judgment.” *Imperial Bank v. Pim Elec., Inc.*, 33 Cal. App. 4th 540, 546-47 (1995); *see also* Cal.
20 Civ. Proc. Code, §§ 708.110-708.205. All assets of a judgment debtor are subject to enforcement.
21 Cal. Civ. Proc. Code, § 695.010(a).

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

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

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

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

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

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

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

19 California Code of Civil Procedure § 708.150 pertains to an order for examination of a
20 corporation, partnership, etc., and sets forth that:

21 (a) If a corporation, partnership, association, trust, or other organization is served
22 with an order to appear for an examination, it shall designate to appear and be
23 examined one or more officers, directors, managing agents, or other persons who
24 are familiar with its property and debts.

25 (b) If the order to appear for an examination requires the appearance of a specified
26 individual, the specified individual shall appear for the examination and may be
27 accompanied by one or more officers, directors, managing agents, or other
28 persons familiar with the property and debts of the corporation, partnership,
association, trust, or other organization.

(c) If the order to appear for the examination does not require the appearance of a
specified individual, the order shall advise the corporation, partnership,
association, trust, or other organization of its duty to make a designation under
subdivision (a).

(d) A corporation, partnership, association, trust, or other organization, whether or
not a party, may appear at an examination through any authorized officer,
director, or employee, whether or not the person is an attorney.

1 Cal. Civ. Proc. Code § 708.150. Here, judgment creditor Ronald Moore’s application does not
2 require the appearance of a specific individual. (Doc. 132.) Accordingly, judgment debtor Chase,
3 Inc., “shall designate to appear and be examined one or more officers, directors, managing agents,
4 or other persons who are familiar with its property and debts.” Cal. Civ. Proc. Code § 708.150(a).

5 Additionally, California Code of Civil Procedure § 708.160(a) provides that “[e]xcept as
6 otherwise provided in this section, the proper court for examination of a person under this article is
7 the court in which the money judgment is entered.” Cal. Civ. Proc. Code, § 708.160(a). Here,
8 judgment was entered by this Court and in favor of Ronald Moore on March 7, 2016. (Docs. 101;
9 102.)

10 As such, judgment creditor Ronald Moore’s application sets forth the showing required by
11 Federal Rule of Civil Procedure 69(a)(2) and the applicable provisions of the California Code of
12 Civil Procedure §§ 708.110 and 708.160.

13 V. CONCLUSION AND ORDER

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. Defendant/judgment debtor Chase, Inc., shall designate one or more officers,
16 directors, or managing agents who are familiar with Chase, Inc.’s property and debts and **shall**
17 **appear personally on Monday, October 24, 2016, at 2:00 p.m.** in Courtroom 7 of the United
18 States District Courthouse, located at 2500 Tulare Street, Fresno, California, 93721, to furnish
19 information to aid in enforcement of a money judgment by answering questions about the
20 Defendant/judgment debtor’s real and person property;

21 2. Plaintiff/judgment creditor must serve this order upon Defendant/judgment debtor
22 Chase, Inc., personally not less than 10 days before the date set for the examination and must file a
23 certificate of such service with the Court; and

24 3. If Plaintiff/judgment creditor is unable to effectuate personal service on
25 Defendant/judgment debtor Chase, Inc., within the required time, Plaintiff/judgment creditor must
26 file notice with the Court by no later than 9 days before the date set for the examination and
27 inform the Court that the examination hearing must be taken off calendar.

28 //

1 NOTICE TO JUDGMENT DEBTOR. IF YOU FAIL TO APPEAR AT THE TIME AND
2 PLACE SPECIFIED IN THIS ORDER, YOU MAY BE SUBJECT TO ARREST AND
3 PUNISHMENT FOR CONTEMPT OF COURT AND THE COURT MAY MAKE AN ORDER
4 REQUIRING YOU TO PAY THE REASONABLE ATTORNEY'S FEES INCURRED BY THE
5 JUDGMENT CREDITOR IN THIS PROCEEDING.²

6
7 IT IS SO ORDERED.

8 Dated: August 31, 2016

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

² This notice is furnished pursuant to California Code of Civil Procedure § 708.110(e).