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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LINDE, LLC,

Plaintiff,

v.

VALLEY PROTEIN, LLC,

Defendant.

Case No. 1:16-cv-00527-KES-EPG

ORDER GRANTING APPLICATION FOR
APPEARANCE AND EXAMINATION
CONCERNING PROPERTY OF THE
JUDGMENT DEBTOR

(ECF No. 99)

EXAMINATION OF ROBERT COYLE SET
FOR AUGUST 1, 2024, AT 10:00 A.M.

I. INTRODUCTION

Plaintiff Linde, LLC has filed an application asking the Court to order a third party, Mr. Robert Coyle, to appear at the Fresno Courthouse for an examination concerning property of Defendant Valley Protein, LLC, the judgment debtor in this case. (ECF No. 99). For the reasons explained below, the Court will grant the application. *See* Local Rule 302(c)(11) (assigning “[e]xamination of judgment debtors” to the magistrate judge assigned to a case).

II. BACKGROUND

Some brief background information is helpful to understanding Plaintiff’s application. Plaintiff filed this case on April 14, 2016, bringing state law claims for breach of contract, breach of the implied covenant of good faith and fair dealing, account stated, and goods and services rendered. (ECF No. 1). Generally, the complaint alleged that Defendant failed to comply with the parties’ agreement that Defendant would purchase carbon dioxide from Plaintiff for Defendant’s plant located in Fresno, California.

1 In July 2019, formerly presiding District Judge Dale A. Drozd granted summary judgment
2 to Plaintiff on all its claims—except for its claim for breach of the implied covenant of good faith
3 and fair dealing—resulting in an award of \$1,002,047.89. (ECF No. 76, pp. 40-41). Later,
4 Plaintiff was also awarded \$246,219.00 in attorney fees (ECF No. 90) and \$5,061.56 for costs
5 (ECF No. 91).

6 For nearly five years, no action occurred in the case. However, in April 2024, after
7 Plaintiff’s counsel served discovery requests seeking information they believed would assist with
8 Plaintiff’s enforcement of the judgment, defense counsel moved to withdraw from this case,
9 noting that Defendant’s managing member, Mr. Robert Coyle, consented to the termination of
10 representation. (ECF No. 94). The Court granted the motion, and no substitute counsel has
11 appeared on behalf of Defendant. (ECF No. 98).

12 Now before the Court is Plaintiff’s application, which asks for an order directing Mr.
13 Robert Coyle to appear for an examination on June 28, 2024, at 10 a.m. in Courtroom 10 of the
14 Fresno Courthouse to answer questions regarding property in his possession or control that
15 belongs to Defendant that may be used to enforce the monetary judgment in this case. (ECF No.
16 99). In support of the application, Plaintiff has provided a declaration from Attorney Derek
17 Mayor. (ECF No. 99-1). Among other things, the declaration states as follows: Defendant is a
18 California LLC with one member and manager, Mr. Robert Coyle; Defendant’s business address
19 is 1828 East Hedges, Fresno, California 93703; Defendant has failed to pay any of the amounts
20 owed; and Plaintiff wants to examine Mr. Robert Coyle because he “may have possession or
21 control of property in which the Judgment Debtor has an interest or is indebted to the Judgment
22 Debtor in an amount exceeding two hundred and fifty dollars (\$250).” (ECF No. 99-1, p. 3).

23 **III. STANDARDS**

24 Federal Rule of Civil Procedure 69 addresses enforcement proceedings:

25 **(a) In General.**

26 **(1) Money Judgment; Applicable Procedure.** A money judgment is
27 enforced by a writ of execution, unless the court directs otherwise. The
28 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.

(2) Obtaining Discovery. In aid of the judgment or execution, the judgment

1 creditor or a successor in interest whose interest appears of record may
2 obtain discovery from any person--including the judgment debtor--as
3 provided in these rules or by the procedure of the state where the court is
4 located.

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

6 Accordingly, Rule 69 permits a judgment creditor (Plaintiff in this case) to utilize state
7 law procedures where the court is located to obtain discovery to enforce a judgment. Here,
8 Plaintiff's application is made on a California state form that cites authority governing
9 examination proceedings, which authority is primarily found in California's Code of Civil
10 Procedure §§ 708.110 to 708.205.

11 Principally, Plaintiff cites § 708.120, which governs the issuance of an order where
12 property is in the possession or control of a third party, Mr. Robert Coyle in this case.

13 Upon ex parte application by a judgment creditor who has a money judgment and
14 proof by the judgment creditor by affidavit or otherwise to the satisfaction of the
15 proper court that a third person has possession or control of property in which the
16 judgment debtor has an interest or is indebted to the judgment debtor in an amount
17 exceeding two hundred fifty dollars (\$250), the court shall make an order directing
18 the third person to appear before the court, or before a referee appointed by the
19 court, at a time and place specified in the order, to answer concerning such
20 property or debt. The affidavit in support of the judgment creditor's application
21 may be based on the affiant's information and belief.

22 Cal. Civ. Proc. Code § 708.120(a).

23 This same section has other requirements, including that (1) an order for examination be
24 served on the third person and the judgment debtor, § 708.120(b); (2) the order provide certain
25 notices, § 708.120(e); (3) the provision of mileage fees to a third person at the time of service to
26 cover travel costs, § 708.120(f).

27 **IV. ANALYSIS**

28 Upon review, the Court will grant Plaintiff's application, although it will select a different
date for the examination to allow time for service of this order and sufficient notice to Mr. Coyle.

As described above, Plaintiff (the judgment creditor) has a monetary judgment in this case
against Defendant (the judgment debtor). (ECF Nos. 76, 79). Further, Plaintiff has submitted
satisfactory evidence through Attorney Mayor's declaration that a third person—Mr. Robert
Coyle—has possession or control of property in which the judgment debtor has an interest or is

1 indebted to the judgment debtor in an amount exceeding two hundred fifty dollars (\$250).
2 Specifically, the declaration states that Mr. Robert Coyle is the sole member and manager of
3 Defendant.¹ Thus, Mr. Robert Coyle would reasonably be expected to have possession or control
4 of Defendant’s property. Accordingly, the Court will grant the application subject to the
5 requirements specified below and any that apply by the operation of law.

6 **V. ORDER**

7 Accordingly, IT IS ORDERED as follows:

- 8 1. Plaintiff’s application for appearance and examination concerning property of the
9 judgment debtor (ECF No. 99) is granted.
- 10 2. Third party Mr. Robert Coyle shall appear personally on August 1, 2024, at 10:00
11 a.m.,² in Courtroom 10 of the United States District Courthouse, located at 2500
12 Tulare Street, Fresno, California, 93721 to answer questions concerning the property
13 of Defendant and judgment debtor Valley Protein, LLC.
- 14 3. Plaintiff is responsible for serving this order. Specifically, as required by California
15 Code of Civil Procedure § 708.120(b), not less than 10 days prior to the date set for
16 the examination, a copy of the order shall be: (1) Served personally on the third person
17 and (2) served personally or by mail on the judgment debtor.³ Additionally, Plaintiff
18 shall file proof of service as soon as practicable.
- 19 4. As required by California Code Civil Procedure Code § 708.120(e), the following
20 statements are provided in 14-point boldface type:

21 **a. (1) “NOTICE TO PERSON SERVED. If you fail to appear at**
22 **the time and place specified in this order, you may be subject to**
23 **arrest and punishment for contempt of court and the court may**
24 **make an order requiring you to pay the reasonable attorney's**
fees incurred by the judgment creditor in this proceeding.”

25 ¹ The Court notes that Mr. Robert Coyle submitted a declaration on April 24, 2024, in support of counsel’s
26 request to withdraw stating, “I am the Managing Member of Valley Protein, LLC (‘Valley Protein’).”
(ECF No. 95, p. 1).

27 ² While Plaintiff requested June 28, 2024, for the examination, the Court has extended this date to allow
sufficient time to serve this order.

28 ³ For personal service, this order may be served by the United States Marshal Service, a sheriff, or
registered process server.

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b. (2) “NOTICE TO JUDGMENT DEBTOR. The person in whose favor the judgment was entered in this action claims that the person to be examined pursuant to this order has possession or control of property which is yours or owes you a debt. This property or debt is as follows: (see the description of the property identified above in this order). If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and personally serve a copy on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for this examination to establish your claim of exemption or your exemption may be waived.”

IT IS SO ORDERED.

Dated: June 12, 2024

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE