

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

J & J SPORTS PRODUCTIONS,
INC.,

Plaintiff,

v.

DAVID MICHAEL DAY, et al.,

Defendants.

No. CIV. S-10-3023 LKK/GGH

ORDER

On September 14, 2011, default judgment was entered in this action. (ECF No. 22) On September 24, 2013, an abstract of judgment and a writ of execution were issued by the Clerk of the Court. (ECF Nos. 24 and 25) On April 29, 2014, plaintiff filed a request for an order authorizing service of writs of execution by Rezak Meyer Attorney Service, a Registered Process Server. (ECF No. 26) Plaintiff's request is predicated on the assertion, declared under penalty of perjury by plaintiff's counsel, that "the U.S. Marshal's Service does not perform execution levies." Request, filed April 29, 2014 (ECF No. 26) at 1.

1 "Federal Rule of Civil Procedure 69(a) governs execution
2 proceedings in federal courts." Hilao v. Estate of Marcos, 95
3 F.3d 848, 851 (9th Cir. 1996). Rule 69(a) rule provides that

4 [a] money judgment is enforced by a writ of
5 execution, unless the court directs
6 otherwise. The procedure on execution—and in
7 proceedings supplementary to and in aid of
8 judgment or execution—must accord with the
9 procedure of the state where the court is
10 located, but a federal statute governs to the
11 extent it applies.

12 Fed. R. Civ. P. 69(a). Federal Rule of Civil Procedure 4.1,
13 supplemented by the requirements of state law, governs service of
14 writs of execution and notices of levy. Hilao, 95 F.3d at 854.
15 Rule 4.1 requires service "[b]y a United States marshal or deputy
16 marshal or by a person specially appointed for that purpose."
17 Fed. R. Civ. P. 4.1(a). California law has additional
18 requirements. See Hilao, 95 F.3d at 853 (citing Cal. Civ. Proc.
19 § 684.110).

20 This court has been informed by the Office of the United
21 States Marshal for the Eastern District of California (Eastern
22 District) that the United States Marshal for the Eastern District
23 does serve writs of execution under Fed. R. Civ. P. 4.1 within
24 this judicial district, and that writs of execution that are to
25 be served outside this judicial district must be served in
26 accordance with the requirements of the federal district court
27 that covers the area in which the writ is to be served.¹


28 ¹ Plaintiff's request cites to "Rule 4(c) of the Federal Rules of Civil
Procedure of the United States District Court for the Central District of
California," Request, filed April 29, 2014 (ECF No. 26) at 1, and the writ,
prepared on a state court form, directs the Sheriff or Marshal of the County
of Los Angeles to enforce the judgment. The Local Rules for the United States
District Court for the Central District of California provide that "[e]xcept
as otherwise provided by order of the Court, or when required by the treaties

1 The key fact, not in evidence on this record, is where
2 plaintiff intends to serve the writ of execution. No notice of
3 levy accompanies the writ of execution filed September 24, 2013,
4 and it is unclear from that writ of execution how plaintiff
5 intends to execute the judgment, e.g., through wage garnishment,
6 levy on account, or some other manner. If plaintiff seeks to
7 serve the writ of execution in an area encompassed by this
8 judicial district, the request for alternative service is
9 unnecessary because the United States Marshal for the Eastern
10 District will serve the writ. If plaintiff seeks to serve the
11 writ of execution in an area encompassed by a different judicial
12 district, plaintiff must comply with the rules and procedures of
13 the United States District Court for that district in connection
14 with such service and, if an order for appointment of a process
15 server is required, present the request to that Court.

16 For all of the foregoing reasons, IT IS HEREBY ORDERED that
17 plaintiff's April 29, 2014 request is denied without prejudice.

18 DATED: July 10, 2014.

19
20
21
22
23
24
25
26
27


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

28 or statutes of the United States, process shall not be presented to the United States Marshal for service." L.R. 4-2 (C.D.Cal.)