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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BEN GORDON, G7, INC, and
BG4, INC.,

Plaintiffs and Creditors,

No. 2:10-mc-00070 WBS KJN

v.

VITALIS PARTNERS, LLC, et al.,

Defendants.

ORDER

_____/

On September 27, 2012, counsel for defendant Larry W. Harmon filed the proposed stipulated settlement (the “Stipulation”) currently pending before the undersigned.¹ (Stipulation, Dkt. No. 77.) For the reasons that follow, the undersigned declines to approve the proposed Stipulation as currently drafted. The parties shall have 30 days from the date of this order in which to file a revised Stipulation, or, in the alternative, supplemental briefing supporting the current Stipulation and addressing each of the issues described below.

¹ At its commencement, this matter proceeded before the undersigned pursuant to Eastern District of California Local Rule 302(c)(11) [“Examinations of judgment debtors”] and 28 U.S.C. § 636(b)(1). (Dkt. No. 4 (Mot. for Order Requiring Exam. of J. Debtor).) Given that plaintiffs have now requested the court’s intervention outside the scope of a judgment debtor examination, however, it is not clear whether this matter should continue to proceed before the undersigned pursuant to any subdivision of Local Rule 302(c), as described below.

1 I. BACKGROUND

2 The Northern District of Illinois entered a judgment in plaintiffs' favor on January
3 27, 2010 (the "Judgment"). (See Dkt. No. 19 at 2-3.) On June 25, 2010, plaintiffs "registered"
4 that foreign judgment in the amount of \$1,386,666.67 in the Eastern District of California on
5 grounds that "the Judgment Debtors reside in this District." (Dkt. No. 1; see also Dkt. No. 5,
6 Attachment.) Plaintiffs sought to enforce the Judgment in the Eastern District of California, and
7 asked this court to issue an Order Requiring the Examination of Judgment Debtor Larry Harmon.
8 (Dkt. No. 8.) The court ordered the examination defendant Harmon as a judgment debtor. (Dkt.
9 No. 10.) This court had no involvement in the underlying action that led to entry of the final
10 Judgment in the Northern District of Illinois. In fact, this court's only role in this dispute, thus
11 far, has been to order the examinations of judgment debtor Larry Harmon (Dkt. No. 8 at 1, Dkt.
12 No. 69), Frank Castillo on behalf of third party Harmon-Castillo LLP (Dkt. No. 68), and of a
13 third party custodian of records (Dkt. No. 70).

14 II. DISCUSSION

15 A. *Jurisdiction In Eastern District Of California vs. Northern District Of*
16 *Illinois*

17 The parties have not compellingly shown that the Eastern District of California
18 has authority to approve the settlement of a suit filed in this court solely to "enforce" the
19 judgment of a district court in Illinois. If the Stipulation is intended to "settle" the enforcement
20 action filed in this court, but not to settle *all* of the defendant's debts to plaintiffs that arise from
21 the Judgment, the Stipulation is unclear in this regard.

22 B. *Magistrate Judge's Authority And Timing Issues*

23 Even if the Eastern District of California properly has jurisdiction to approve the
24 settlement of this enforcement action, it is not clear that the undersigned magistrate judge has
25 authority/jurisdiction to approve the Stipulation. The magistrate judge's authority in this
26 particular case has been pursuant to Eastern District of California Local Rule 302(c)(11)

1 ["Examinations of judgment debtors"]. The pending Stipulation does not fall into the category of
2 an "examination of judgment debtor." Accordingly, the parties are invited to review Local Rule
3 302 and to consider refiling the Stipulation before the assigned United States District Judge.

4 Further, *if* the parties were to show that the undersigned has authority to approve
5 the Stipulation, given that the Stipulation would potentially dispose of this case, at minimum the
6 undersigned would have to issue proposed Findings and Recommendations for the district
7 judge's review before the Stipulation can be fully approved. If time is of the essence to the
8 parties — and it seems to be, given certain upcoming dates listed in the Stipulation — the parties
9 will likely need to request resolution of the Stipulation upon shortened time, request the district
10 judge's approval of proposed Findings and Recommendations on shortened time, and/or seek
11 some similar form of emergency relief.

12 C. *Substantive Questions About The Stipulation's Terms*

13 Even if the parties compellingly demonstrate that the undersigned has authority to
14 approve of their Stipulation, substantive questions exist.

15 1. The Unnamed "Lender"

16 The parties deliberately decline to reveal the identity of a "Lender" that is
17 repeatedly and materially referenced in the Stipulation. Yet, the parties offer no reason for the
18 secrecy surrounding the identity of the "Lender." Similarly, the "Lender's" name is redacted
19 from Exhibit B to the Stipulation, but no reason is given for the redaction. Given that the Lender
20 appears to play a somewhat significant role in the proposed stipulated settlement, the parties
21 should identify the Lender, or explain why no such identification is necessary, or explain the
22 need for secrecy with respect to the Lender's identity.

23 2. The "Assignment" And The Non-Disclosure Provision

24 According to the terms of the proposed Stipulation, the "Lender" has assigned to
25 defendant Larry Harmon & Associates ("LHA") the "right to apply for" money (in the form of \

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1 sales tax refunds)² from the State of California. Moreover, as part of the stipulated settlement,
2 LHA seeks to transfer those refunds to plaintiff Gordon immediately upon receiving them. On
3 the undersigned’s review, the Stipulation reflects that LHA is effectively promising to obtain the
4 money from the State of California, and then to immediately pay it to plaintiff “forthwith” and
5 “by check.” (Stipulation ¶¶ 3-4.) However, the parties’ Stipulation also references California
6 Regulation 1642(i)(4)(A)(8) (the “Regulation”), and under that regulation, it appears that LHA is
7 *not allowed to assign the right* to receive the refunds. See Cal. Code Regs. tit. 18, § 1642.

8 If Regulation 1642(i)(4)(A)(8) specifically prohibits LHA from “assigning” its
9 right to be paid certain state refund monies, but LHA has promised to “forthwith” pay those
10 monies to Gordon, have the parties effectively agreed to do an end-run around the Regulation’s
11 prohibition on assignment of the refunds? Perhaps not, but the parties have not compellingly
12 explained as much.

13 The Stipulation also contains a rather odd non-disclosure provision relating to this
14 potential end-run around the Regulation’s prohibition on assignment of the refunds. The
15 Stipulation includes the following provision: “[Plaintiff Gordon] shall not inform (directly or
16 indirectly) any instrumentality of the State of California that Gordon has or asserts a claim or
17 right against that refund, or that [defendant] Harmon has made any agreements with Gordon or
18 anyone else respecting it.” (Stipulation ¶ 3.) Somewhat disconcertingly, the parties do not

19 ² When buyers default on their payments to the retailers/lenders, the State of California
20 returns sales taxes that the retailers/lenders paid to the State for those sales. According to a
21 treatise, “[s]tate sales tax statutes generally require a vendor to collect the tax from the purchaser
22 at the time of the sale and to remit the tax to the state with a tax return for the period in which the
23 sale occurred. Thus, a vendor making a credit or installment sale to a customer who later defaults
24 in payment will have remitted sales tax to the state that it could not collect from the customer.
25 ‘Bad debt’ statutes provide relief to vendors in this situation. These statutes allow a vendor to
26 credit the uncollectible amount of sales taxes against the taxes due on a subsequent tax return or,
with the same result, to deduct the uncollectible receipts in computing the taxable receipts on
such return. Some statutes also provide for a refund of the uncollected sales taxes previously
paid.” James A. Amdur, Recovery of Sales Taxes Paid on Bad Debts, 38 A.L.R. 6th 255 (2008).
Here, an unidentified “Lender” has assigned to LHA the right to receive the sales taxes the state
intends to pay to the Lender. LHA now wants to pay those refunded sales taxes to plaintiff
Gordon as part of a stipulated settlement.

1 explain why they do not want the State of California to be made aware, directly or indirectly,
2 about their Stipulation. Perhaps the reason is because if the State knew LHA was going to
3 immediately pay Gordon the refund money, then the State would not pay out the money. The
4 undersigned does not prejudge these issues, and notes only that the parties have not offered any
5 explanations for the above-described provisions of the Stipulation.

6 3. A Contract vs. A Court Order

7 It is unclear whether the Stipulation, which is already an agreement between the
8 signing parties, also truly needs to be a court order. While a settlement agreement is typically a
9 binding contract between the parties regardless of whether the court approves it, here the parties
10 have agreed that “[t]he foregoing agreements shall be effective only upon the entry by the Court
11 of its order containing the provisions set forth” herein. (Stipulation ¶ 10.)

12 Given this provision, it is not entirely clear whether any of the parties would
13 decline to enter into the Stipulation were it not also an order of the court. At minimum, the
14 parties have not explained the need for the court’s approval of their Stipulation. Absent true
15 need for this approval, the parties have not explained why the Stipulation cannot simply be
16 treated as a binding contract between its signatories.

17 4. Continuing Jurisdiction

18 The parties agree that the court will “have continuing jurisdiction” over the
19 stipulated settlement agreement. (Stipulation ¶ 10.) However, the parties have not offered any
20 reasons the court should agree to retain continuing jurisdiction over their agreement. Again, this
21 action was filed in the Eastern District of California solely to effectuate enforcement of a
22 judgment from a district court in Illinois. This court does not have any special knowledge of the
23 parties’ dispute that would potentially help resolve future disputes. The parties have not
24 explained why they could not initiate a new breach-of-contract action in the event of a breach of
25 the stipulated settlement agreement.

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