

1 Thomas W. Barth, SBN 154075
BARTH DALY LLP
2 2810 Fifth Street
Davis, California 95618
3 Telephone: (916) 440-8600
Facsimile: (916) 440-9610
4 Email: tbarth@barth-daly.com

5 Attorneys for HYNES AVIATION
INDUSTRIES, INC., HYNES CHILDREN TF
6 LIMITED and MICHAEL HYNES

7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 SACRAMENTO E.D.M., INC., a California
corporation; DAN FOLK, an individual,

12 Plaintiffs,

13 v.

14 HYNES AVIATION INDUSTRIES,
15 INC., dba HYNES AVIATION
SERVICES, HYNES CHILDREN TF
16 LIMITED; MICHAEL K. HYNES,

17 Defendants.

18 HYNES AVIATION INDUSTRIES,
19 INC., an Oklahoma corporation;
MICHAEL K. HYNES, an individual,

20 Counter-Claimants,

21 v.

22 SACRAMENTO E.D.M., INC., a California
23 corporation; DAN FOLK, an individual,

24 Counter-Defendants.

No. 2:13-CV-00288-KJN

**ORDER FOR APPEARANCE AND
EXAMINATION OF DANIEL M. FOLK ON
BEHALF OF JUDGMENT
DEBTOR SACRAMENTO E.D.M., INC.**

25
26 **I. INTRODUCTION**

27 On April 18, 2017, judgment was entered in favor of Judgment Creditor, Hynes Aviation
28 Industries, Inc. ("Judgment Creditor" or "Hynes Aviation"), and against counter-defendant,

{00030077}

1 Sacramento E.D.M., Inc. (Judgment Debtor), in the United States District Court for the Eastern
2 District of California [ECF No. 150]. On March 27, 2019, the Court filed its Amended Judgment
3 [ECF No. 160]. The Judgment and Amended Judgment awarded net relief in favor of Hynes
4 Aviation and against Judgment Debtor in the total amount of \$795,750.36.

5 **II. DISCUSSION**

6 Judgment Creditor has filed an application for a debtor examination and production of
7 documents. Pursuant to Federal Rule of Civil Procedure 69(a)(1), "The procedure on execution—
8 and in proceedings supplementary to and in aid of judgment or execution—must accord with the
9 procedure of the state where the court is located, but a federal statute governs to the extent it
10 applies." "[T]he procedure on execution is to be in accordance with the procedure of the state in
11 which the district court is located at the time the remedy is sought." In re Estate of Ferdinand
12 Marcos Human Rights Litigation, 536 F.3d 980, 987-988 (9th Cir. 2008). In turn, California
13 Code of Civil Procedure Section 708.110 provides, in relevant part:

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

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

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

23 (d) The judgment creditor shall personally serve a copy
24 of the order on the judgment debtor not less than 10 days before the
25 date set for the examination. Service shall be made in the manner
26 specified in Section 415.10. Service of the order creates a lien on
the personal property of the judgment debtor for a period of one
year from the date of the order unless extended or sooner
terminated by the court.

27 (e) The order shall contain the following statement in
28 14-point boldface type if printed or in capital letters if typed:
"NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the

1 time and place specified in this order, you may be subject to arrest
2 and punishment for contempt of court and the court may make an
3 order requiring you to pay the reasonable attorney's fees incurred by
4 the judgment creditor in this proceeding."

5 Cal. Code Civ. Proc. § 708.110(a)-(e). California Code of Civil Procedure Section 708.160(b)
6 also provides that "[a] person sought to be examined may not be required to attend an
7 examination before a court located outside the county in which the person resides or has a place
8 of business unless the distance from the person's place of residence or place of business to the
9 place of examination is less than 150 miles." Cal. Code Civ. Proc. § 708.160(b).

10 Plaintiff's application sets forth the showing required by Federal Rule of Civil Procedure
11 69(a)(2) and the applicable provisions of the California Code of Civil Procedure Sections 708.110
12 and 708.160.

13 Plaintiff also seeks to require the judgment debtor to produce documents prior to the
14 examination. Under California law, judgment debtor proceedings "permit the judgment creditor
15 to examine the judgment debtor, or third persons who have property of or are indebted to the
16 judgment debtor, in order to discover property and apply it toward the satisfaction of the money
17 judgment." *United States v. Feldman*, 324 F.Supp.2d 1112, 1116 (C.D. Cal. 2004) (*quoting*
18 *Imperial Bank v. Pim Elec., Inc.*, 33 Cal.App.4th 540 (1995)). Debtor examination is intended "to
19 allow the judgment creditor a wide scope of inquiry concerning property and business affairs of
20 the judgment debtor, and to leave no stone unturned in the search for assets which might be used
21 to satisfy the judgment." *Alcalde v. NAC Real Estate Investments & Assignments, Inc.*, 580
22 F.Supp.2d 969, 970 (C.D. Cal. 2008) (citations and internal punctuation omitted).

23 Federal Rule of Civil Procedure 34 authorizes a party to seek production of documents.
24 Further, California Code of Civil Procedure Section 708.030(a) provides that a "judgment creditor
25 may demand that any judgment debtor produce and permit the party making the demand, or
26 someone acting on that party's behalf, to inspect and to copy a document that is in the possession,
27 custody, or control of the party on whom the demand is made..." Cal. Code Civ.

28 ///

///

{00030077}

1 Proc. § 708.030. Accordingly, the judgment debtor shall produce the following documents for
2 inspection as directed by this order:

3 (1) Any and all information and documentation identifying real property,
4 personal property, computers, intellectual property, vehicles, boats, brokerage accounts,
5 retirement accounts, life insurance policies, bank deposits, securities, cash and all other assets
6 owned by Sacramento E.D.M., Inc., including, but not limited to, information relating to financial
7 accounts and monies owed to Sacramento E.D.M., Inc. by others. Such information and
8 documents shall include, without limitation, the location of any and all property and assets of
9 Sacramento E.D.M., Inc.

10 (2) All tax returns filed by Sacramento E.D.M., Inc. with any governmental
11 body for the years 2015 through the present.

12 (3) All of Sacramento E.D.M., Inc.'s accounting records, computerized,
13 electronic and/or in printed or paper format for the years 2016 through the present.

14 (4) All of Sacramento E.D.M., Inc.'s statements, cancelled checks and related
15 banking documents for any bank, brokerage or financial account at least partially controlled by
16 Sacramento E.D.M., Inc., or recorded in the name of Sacramento E.D.M., Inc. for the years 2016
17 through the present.

18 (5) All of Sacramento E.D.M., Inc.'s checkbooks, checkbook stubs and
19 checkbook entries for the years 2016 through the present.

20 (6) All settlement agreements, promissory notes, and any other writings by
21 which another party has agreed to pay money to Sacramento E.D.M., Inc.

22 (7) All settlement agreements, promissory notes, and any other writings by
23 which Sacramento E.D.M., Inc. has agreed to pay money to another party.

24 (8) All of Sacramento E.D.M., Inc.'s records of accounts payable and
25 receivables, payroll check stubs, passbooks, financial statements, deeds, promissory notes and
26 stock registers.

27 (9) All credit or debit card statements of Sacramento E.D.M., Inc. for the years
28 2016 through the present.

{00030077}

1 (10) All credit or debit card statements of any other person or entity, pertaining
2 to financial accounts used for costs or expenses relating to the business of Sacramento E.D.M,
3 Inc., for each month for the years 2016 through the present.

4 (11) Documents sufficient to show Sacramento E.D.M., Inc.'s balance sheet for
5 each month for the years 2016 through the present.

6 (12) Documents sufficient to show Sacramento E.D.M., Inc.'s gross revenues
7 for each month for the years 2016 through the present.

8 (13) Documents sufficient to show any and all payments made to or for the
9 benefit of Daniel M. Folk by any other person or entity as a result of, or relating to revenues
10 generated by the business of Sacramento E.D.M, Inc. for each month during the years 2016 to the
11 present.

12 (14) Documents sufficient to show Sacramento E.D.M., Inc.'s expenditures of
13 funds for any purpose for each month for the years 2016 through the present.

14 (15) Any and all leases pertaining to any real or personal property, effective at
15 any time from January 1, 2016 to the date of the examination, to which Sacramento E.D.M., Inc.
16 is a party, whether as lessor or lessee, including all exhibits and amendments of such leases.

17 (16) Any and all leases pertaining to any real or personal property, effective at
18 any time from January 1, 2016 to the date of the examination, to which Summit Leasing Partners
19 LP is a party, whether as lessor or lessee, including all exhibits and amendments of such leases.

20 (17) Documents sufficient to show agreements by Sacramento E.D.M., Inc.,
21 with Summit Leasing Partners LP regarding business of any kind or financial arrangements of
22 any kind between the two entities, at any time between January 1, 2016 and the date of the
23 examination.

24 (18) Documents sufficient to show agreements by Sacramento E.D.M., Inc. with
25 any other person or entity regarding business of any kind to be performed by Sacramento E.D.M.,
26 Inc. for such person or entity at any time after the date of this Order, whether on a recurring basis
27 or otherwise.

28 ///

{00030077}

1 (19) Any and all documents sufficient to show the name and address of each
2 business in which each of Sacramento E.D.M., Inc.'s current or former officers, shareholders,
3 and/or directors now has an interest and the nature of each such person's interest in each such
4 business.

5 (20) Any and all documents sufficient to show any and all assets owned by any
6 entities that currently are or previously were a subsidiary or affiliate of Sacramento EDM, Inc.
7 during the years 2016 through the present.

8 (21) Any and all documents sufficient to show bank, brokerage, and/or financial
9 records of any entities that currently are or previously were a subsidiary or affiliate of Sacramento
10 EDM, Inc., during the years 2016 through the present.

11 (22) Any and all documents sufficient to show bank, brokerage, and/or financial
12 records of any entities that currently are or previously were wholly owned by the shareholder(s)
13 of Sacramento E.D.M., during the years 2016 through the present.

14 **III. CONCLUSION**

15 Based on the foregoing, IT IS HEREBY ORDERED that:

16 1. Daniel M. Folk, the registered agent of the Judgment Debtor shall appear
17 personally on May 11, 2020, at 10:00 a.m. in Courtroom 25 of the United States District Court,
18 located at 501 I Street, Sacramento, California, 95814, to furnish information to aid in
19 enforcement of a money judgment by answering questions about the Judgment Debtor's real and
20 personal property and assets;

21 2. Judgment Debtor shall produce documents responsive to this order to
22 Thomas W. Barth of Barth Daly LLP, 2810 Fifth Street, Davis, California 95618 on or before
23 **April 13, 2020**; and

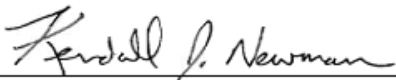
24 3. Judgment Creditor must serve this order upon Daniel Folk the agent for
25 service of process of the Judgment Debtor personally not less than ten (10) days before the date
26 set for the examination and must file a certificate of such service with the Court.

27 ///
28 ///
 {00030077}

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

6
7 IT IS SO ORDERED.

8 Dated: March 13, 2020

9
10 
11 _____
12 KENDALL J. NEWMAN
13 UNITED STATES MAGISTRATE JUDGE

14 288.exam

15
16
17
18
19
20
21
22
23
24
25
26
27
28
ATTORNEYS AT LAW
SACRAMENTO

{00030077}