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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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NATIONAL GRANGE OF THE ORDER
OF PATRONS OF HUSBANDRY,

Plaintiff,

v.

CALIFORNIA GUILD, formerly
doing business as "California
State Grange,"

Defendant.

CIV. NO. 2:14-676 WBS DB

ORDER RE: MOTION FOR ASSIGNMENT
ORDER

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On September 12, 2016, the court ordered defendant California Guild ("Guild") to pay plaintiff National Grange of the Order of Patrons of Husbandry \$144,715.70 in attorneys' fees ("fees order"). (Sept. 12, 2016 Order (Docket No. 154).) Plaintiff now moves for an order assigning it the right to collect payments due to defendant from its local chapters to satisfy the court's fees order. (Pl.'s Mot. (Docket No. 178.)

Plaintiff brought this action against defendant for

1 trademark infringement, false designation of origin, and unfair
2 competition under the Lanham Act. (Compl. (Docket No. 1).) The
3 court granted summary judgment to plaintiff on July 14, 2015,
4 (July 14, 2015 Order (Docket No. 60)), and enjoined defendant
5 "from using marks containing the word 'Grange'" on September 29,
6 2015 ("September 2015 order"), (Sept. 29, 2015 Order (Docket No.
7 85)).

8 On April 20, 2016, the court found defendant in
9 "deliberate and willful" violation of the September 2015 order
10 ("April 2016 order"). (Apr. 20, 2016 Order (Docket No. 138).)
11 Pursuant to 15 U.S.C. § 1117(a), the court awarded plaintiff
12 attorneys' fees incurred from various motions and affidavits it
13 had filed for the purpose of enforcing the September 2015 order.
14 (See id. at 38-39.)

15 On September 12, 2016, the court determined the amount
16 of fees awarded under the April 2016 order to be \$144,715.70.
17 (Sept. 12, 2016 Order at 23.) The court ordered defendant to pay
18 plaintiff the fees awarded and "file an affidavit with the court
19 confirming payment within fourteen (14) business days." (Id.)

20 On September 19, 2016, defendant filed a declaration
21 stating that it "is unable to comply with the [court's] Fee[s]
22 Order" because "[m]ost of the funds [it holds] are subject to a
23 preliminary injunction issued in [a] State Court Action" the
24 parties are involved in. (Decl. of Robert McFarland ("McFarland
25 Decl.") ¶¶ 2, 4 (Docket No. 155).) Plaintiff claims, and
26 defendant does not dispute, that defendant has not paid any
27 portion of the court's fees order to date. (Pl.'s Mot., Mem.
28 ("Pl.'s Mem.") at 4 (Docket No. 178-1); McFarland Decl. ¶ 2.)

1 Plaintiff now moves for an order assigning it the right
2 to collect "all payments due or to become due to defendant" from
3 eighty-three of its local chapters to satisfy the court's fees
4 order. (Pl.'s Mot. at 1.)

5 Federal Rule of Civil Procedure 69(a)(1) provides that
6 proceedings in aid of judgment or execution must comply with the
7 law of the state where the court is located. Fed. R. Civ. P.
8 69(a)(1); Credit Suisse v. U.S. District Court, 130 F.3d 1342,
9 1344 (9th Cir. 1997). Under California Civil Procedure Code
10 section 708.510 ("section 708.510"), "the court may order the
11 judgment debtor to assign to the judgment creditor . . . all or
12 part of a right to payment due or to become due, whether or not
13 the right is conditioned on future developments" Cal.
14 Civ. Proc. Code § 708.510(a); Peterson v. Islamic Republic of
15 Iran, 627 F.3d 1117, 1130-31 (9th Cir. 2010).

16 In considering whether to issue an assignment order
17 under section 708.510, the court "may take into consideration all
18 relevant factors," including "the reasonable requirements of the
19 judgment debtor who is a natural person," other "[p]ayments the
20 judgment debtor is required to make," "the amount remaining due
21 on the money judgment," and "[t]he amount being received or to be
22 received in satisfaction of the right to payment that may be
23 assigned." Cal. Civ. Proc. Code § 708.510(c); Choice Hotels,
24 Int'l, Inc. v. Dostel Corp., M.C. No. 2:11-45 WBS GGH, 2013 WL
25 1324280, at *1 (E.D. Cal. Apr. 2, 2013). While a motion for an
26 assignment order does not demand "[d]etailed evidentiary
27 support," Choice Hotels, 2013 WL 1324280, at *1, a judgment
28 creditor must describe the source of the right to payment with

1 "some degree of concreteness," Icho v. PacketSwitch.com, Inc.,
2 Civ. No. 01-20858 LHK PSG, 2012 WL 4343834, at *2 (N.D. Cal.
3 Sept.21, 2012).

4 Plaintiff identifies two types of payments made by
5 defendant's local chapters to defendant: (1) membership dues, and
6 (2) loan payments. (Pl.'s Mem. at 1.)

7 With respect to membership dues, plaintiff represents
8 that local chapters paid dues to defendant in 2016 and "are
9 expected to continue to pay dues to [defendant]" going forward.
10 (Decl. of Holly Lance ("Lance Decl.") ¶¶ 3-4 (Docket No. 178-2).)
11 Defendant does not dispute that it received dues in 2016 and will
12 continue to receive dues going forward. (See McFarland Decl. ¶¶
13 5, 8 (stating that defendant received "\$14,259.64 in membership
14 dues" for the previous quarter and referring to dues as a
15 "continuing source[] of income" for defendant).) Defendant's
16 bylaws confirm that the dues defendant receives are paid by local
17 chapters. (See Pl.'s Reply Ex. A, Cal. Guild Bylaws ¶ 10.3
18 (Docket No. 181-1).) The dues paid by defendant's local chapters
19 to defendant are a sufficiently concrete source of payment to
20 justify an assignment order.

21 With respect to loan payments, plaintiff represents
22 that four of the eighty-three local chapters listed in its Motion
23 "are making regular loan payments to [defendant]." (Lance Decl.
24 ¶ 5.) Defendant does not dispute that it received loan payments
25 from local chapters in 2016, (see McFarland Decl. ¶ 7), but
26 opposes the assignment of future loan payments on grounds that
27 there is currently a preliminary injunction in the parties' state
28 court action requiring that such payments be "paid into escrow,"

1 (see Def.'s Opp'n at 2 (Docket No. 180)).

2 Plaintiff correctly notes, however, that the state
3 court injunction is limited to payments made pursuant to loans
4 that originated on or prior to April 5, 2013, when the parties
5 split off from each other. (See Pl.'s Reply at 2-3 (Docket No.
6 181); Def.'s Opp'n Ex. 1, State Ct. Prelim. Inj. Order at 1-2
7 (Docket No. 180).¹) Plaintiff has provided copies of promissory
8 notes indicating that defendant made loans to local chapters
9 after April 5, 2013. (See Pl.'s Reply Ex. B, Promissory Notes
10 (Docket No. 181-1).) Plaintiff only seeks assignment of payments
11 made pursuant to post-April 5, 2013 loans. (Pl.'s Reply at 2.)
12 Because defendant has provided no evidence indicating that
13 payments made pursuant to post-April 5, 2013 loans are subject to
14 any encumbrance, the court finds that such payments are also
15 sufficiently concrete to justify an assignment order.

16 The factors set forth in section 708.510(c) indicate
17 that an assignment order is proper here. Defendant has not paid
18 any part of the court's \$144,715.70 fees order to date and has
19 not alerted the court to any judgments or assignments, save the
20 state court injunction discussed above, that it is required to
21 satisfy.

22 Defendant states in its Supplemental Opposition that
23 assigning payments from its local chapters to plaintiff will put

24
25 ¹ The court hereby takes judicial notice of the state
26 court's preliminary injunction order pursuant to Federal Rule of
27 Evidence 201. See U.S. ex rel. Robinson Rancheria Citizens
28 Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)
(Federal courts "may take notice of proceedings in other courts,
both within and without the federal judicial system, if those
proceedings have a direct relation to matters at issue.").

1 it out of operation. (Def.'s Supplemental Opp'n at 2 (Docket No.
2 188).) That the court's assignment order may put defendant out
3 of operation, however, is not in itself an adequate reason to
4 deny plaintiff's Motion. See Telecom Asset Mgmt., LLC v.
5 FiberLight, LLC, No. 14-CV-00728-SI, 2016 WL 7188008, at *4 (N.D.
6 Cal. Dec. 12, 2016) (granting section 708.510 motion despite
7 potential that assignment of payments "will . . . impair the
8 [debtor] company's ability to manage ongoing operations");
9 Innovation Ventures, LLC v. N2G Distrib., Inc., No. SACV 12-717
10 ABC (EX), 2014 WL 10384606, at *5 (C.D. Cal. May 1, 2014)
11 (granting section 708.510 motion despite debtor's representation
12 that assignment of payments will "drive [him] out of business"
13 and "extinguish[]" such payments).

14 Defendant also suggests in its Supplemental Opposition
15 that its nonprofit status should somehow exempt it from section
16 708.510's reach. (See Def.'s Supplemental Opp'n at 3.) While
17 the court is not aware of a case that has directly addressed
18 section 708.510 in the context of nonprofit organizations,
19 nothing in section 708.510, or any authority that the court has
20 found, exempts nonprofit organizations from section 708.510's
21 reach.

22 Because other factors set forth in section 708.510(c)
23 justify an assignment order here, and because the membership dues
24 and payments made pursuant to post-April 5, 2013 loans discussed
25 in this Order are sufficiently concrete sources of payment, the
26 court will grant plaintiff's Motion with respect to membership
27 dues and payments made pursuant to post-April 5, 2013 loans. The
28 court will deny plaintiff's Motion to the extent it seeks

1 assignment of other payments local chapters may owe to defendant,
2 which plaintiff did not specifically address in its Motion. See
3 UMG Recordings, Inc. v. BCD Music Grp., Inc., No. CV07-05808 SJO
4 FFMX, 2009 WL 2213678, at *2 (C.D. Cal. July 9, 2009) (noting
5 that "failure to identify . . . specific assets" may be grounds
6 for denial of assignment).

7 IT IS THEREFORE ORDERED that plaintiff's Motion for an
8 assignment order be, and the same hereby is, GRANTED IN PART as
9 follows:

10 (1) All membership dues due to defendant now or in the
11 future from the local chapters listed on pages one
12 through four of plaintiff's Motion (Docket No. 178) are
13 hereby assigned to plaintiff to the extent necessary to
14 satisfy the court's fees order (Docket No. 154).

15 (2) All payments due to defendant now or in the future
16 pursuant to loans defendant made after April 5, 2013 to
17 the local chapters listed on pages one through four of
18 plaintiff's Motion are hereby assigned to plaintiff to
19 the extent necessary to satisfy the court's fees order.

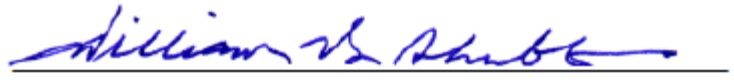
20 (3) Defendant is hereby enjoined from assigning or
21 otherwise disposing of the payments discussed in (1)
22 and (2) to any other person or entity until it has
23 satisfied the court's fees order.

24 (4) Plaintiff's Motion is DENIED in all other respects.

25 (5) Counsel for plaintiff shall serve a copy of this Order
26 on the local chapters listed on pages one through four
27 of plaintiff's Motion.
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Dated: March 9, 2017



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE