

For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

THE THOMAS KINKADE COMPANY,  
FORMERLY KNOWN AS MEDIA ARTS  
GROUP, INC and RICHARD BARNETT,

No. C 06-07034 RS

**ASSIGNMENT ORDER**

Plaintiffs,

v.

KAREN HAZELWOOD, JEFFREY  
SPINELLO, and THOMAS KINKADE AT  
THE DOWNTOWN MALL, LLC,

Defendants.

\_\_\_\_\_ /  
Petitioners obtained a judgment against Barnett in the total amount of \$2,866,499.54, plus interest accruing at the legal rate from January 29, 2010. They bring a motion for an assignment order and for an order restraining judgment debtor. Although service was proper, no opposition to the motion was filed. Petitioners seek an order:

- 1) Instructing Judgment Debtor Richard F. Barnett to assign Barnett’s interest in all monetary distributions and/or rights to payment from Diablo Management Group, Inc. to Judgment Creditors to the extent necessary to pay the Judgment Creditors’ judgment, including accrued interest and attorneys’ fees, until paid in full.

1 2) Ordering Diablo Management Group, Inc. to assign to Judgment Creditors any form of  
2 monetary distribution/compensation to which Barnett is due or entitled in connection  
3 with and/or in accordance with Pacific Metro, LLC's etc., June 13, 2011 Chapter 11 Plan  
4 of Reorganization to the extent necessary to pay the Judgment Creditors' judgment,  
5 including accrued interest and attorneys' fees, until paid in full.

6 3) Restraining Judgment Debtor Barnett and any servant, agent, employee or attorney for  
7 Barnett and any person(s) in active concert and participating with Barnett from  
8 encumbering, assigning, disposing or spending distributions, commissions, royalties and  
9 all rights to payment thereunder from Diablo Management Group, Inc. so that Judgment  
10 Creditors may attempt to secure its interest in Barnett's income before said assets are  
11 completely depleted.

12 Federal Rule of Civil Procedure 69 governs the execution of judgments. It provides that  
13 a "money judgment is enforced by writ of execution," the procedure of which "must accord with  
14 the procedure of the state where the court is located." Fed. R. Civ. Proc. 69(a). California Code  
15 of Civil Procedure § 708.510 provides "the court may order the judgment debtor to assign to the  
16 judgment creditor or to a receiver [. . .] all or part of a right to payment due or to become due."  
17 Cal. C. Civ. Proc. § 708.510(a). California Code of Civil Procedure § 708.520 provides that "the  
18 judgment creditor may apply to the court for an order restraining the judgment debtor from  
19 assigning or otherwise disposing of the right to payment that is sought to be assigned." Cal. C.  
20 Civ. Proc. § 708.520(a).

21 Thus California law provides this Court the authority to grant petitioners' first and third  
22 requests for assignment of Barnett's interest and restriction on his encumbrance of that interest.<sup>1</sup>  
23 Petitioners have not cited any authority, however, that would justify their second request of  
24 assignment as it relates to a third party. Without such clear authority, this Court cannot order a  
25 third party, not named as a party in the underlying case, to make the assignment requested.

26  
27 <sup>1</sup> Petitioner's have not filed a motion requesting attorneys' fees. This Court cannot grant an  
28 award of fees without first having an opportunity to assess the amount requested. Therefore,  
petitioner's first and third requests shall be granted, with the exception of attorneys' fees.

1           Accordingly, it is hereby ordered that Judgment Debtor Barnett immediately assign to the  
2 Judgment Creditors Barnett's interest in all monetary distributions and/or rights to payment from  
3 Diablo Management Group, Inc. to the extent necessary to pay the Judgment Creditors'  
4 judgment, including accrued interest. It is further ordered that Barnett be restrained from  
5 encumbering, converting, assigning, disposing or spending distributions, commissions, royalties  
6 and all rights to payment he receives from Diablo Management Group, Inc.

7           Pursuant to Section 708.520(d), this Order shall be personally served on the Diablo  
8 Management Group, Inc and on Barnett or his counsel of record. Failure to comply with this  
9 Order may subject the debtor to contempt of court.

10           IT IS SO ORDERED.

11  
12 Dated: 3/7/13



13           RICHARD SEEBORG  
14           UNITED STATES DISTRICT JUDGE

For the Northern District of California