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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

SHAUNAK SAYTA,
Plaintiff,

v.

BENNY MARTIN,
Defendant.

Case No. 16-cv-03775-LB

**ORDER DENYING MOTIONS TO
ENFORCE JUDGMENT AND FOR
CIVIL CONTEMPT WITHOUT
PREJUDICE**

Re: ECF Nos. 135–37

INTRODUCTION AND STATEMENT

The court previously confirmed arbitration awards in favor of Shaunak Sayta’s former lawyer, Benjamin Martin, and awarded him attorney’s fees and costs.¹ Mr. Sayta appealed. The Ninth Circuit affirmed and entered judgment in Mr. Martin’s favor against Mr. Sayta and his lawyer, John Cowan, for \$47,372 attorney’s fees and costs. *Sayta v. Martin*, No. 18-17090, Mem. Op. (9th Cir. Feb. 21, 2020); *id.*, Am. Mandate (9th Cir. Feb. 3, 2021). Mr. Martin obtained a writ of execution against Mr. Cowan and tried unsuccessfully to work out a payment plan with him. Mr. Cowan has not paid anything.² Now, Mr. Martin wants an order assigning Mr. Cowan’s accounts receivable and office furniture and equipment to him. He also wants the court to hold Mr. Cowan in civil

¹ Orders – ECF Nos. 50, 70; Judgments – ECF Nos. 51, 71. Citations refer to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Writ – ECF No. 131; Martin Decl. – ECF No. 139 at 2–3 (¶¶ 2–5).

1 contempt.³ The court held a hearing on the motions on July 15, 2021. The court denies Mr. Martin’s
2 motions without prejudice. The assignment of the assets is premature: Mr. Martin has a writ of
3 execution and should enforce it. Mr. Cowan has not violated any court orders, and civil contempt is
4 not warranted.

5 ANALYSIS

6 Under Federal Rule of Civil Procedure 69, a money judgment is enforced by a writ of
7 execution. California law governs the enforcement of the writ of execution here. Fed. R. Civ. P.
8 69(a); *Hilao v. Estate of Marcos*, 95 F.3d 848, 851 (9th Cir. 1996). Under California law, “after
9 entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon
10 application of the judgment creditor.” Cal. Civ. Proc. Code § 699.510. California has procedures
11 for the assignment of assets and the issuance of turnover orders.

12 13 **1. Accounts Receivable**

14 California allows assignment of accounts receivable: “upon application of the judgment
15 creditor on noticed motion, the court *may* order the judgment debtor to assign to the judgment
16 creditor . . . all or part of a right to payment due or to become due, whether or not the right is
17 conditional upon future developments.” Cal. Civ. Proc. Code § 708.510(a) (emphasis added).

18 [The statute] provides a new procedure for reaching certain forms of property that cannot be
19 reached by levy under writ of execution. . . . It also provides an optional procedure for
20 reaching assignable forms of property that are subject to levy, such as accounts
receivable. . . . This remedy may be used alone or in conjunction with other remedies
provided in this title for reaching rights to payment, such as execution.

21 Cal. Civ. Proc. Code § 708.510, Legis. Comm. cmt. (1982). In determining whether to order an
22 assignment, the court may consider all relevant factors, including the following:

23 (1) The reasonable requirements of a judgment debtor who is a natural person and of
24 persons supported in whole or in part by the judgment debtor[;] (2) Payments the judgment
25 debtor is required to make or that are deducted in satisfaction of other judgments and wage
26 assignments, including earnings assignment orders for support[;] (3) The amount
remaining due on the money judgment[; and] (4) The amount being or to be received in
satisfaction of the right to payment that may be assigned.

27
28 ³ Mots. – ECF Nos. 135, 136, 137.

1 *Id.* § 708.510(c). A right to payment may be assigned “only to the extent necessary to satisfy the
2 money judgment.” *Id.* § 708.510(d).

3 “The court has broad discretion in determining whether to order an assignment.” *Telecom*
4 *Asset Mgmt., LLC v. FiberLight, LLC*, No. 14-cv-00728-SI, 2016 WL 7188008, at *1 (N.D. Cal.
5 Dec. 12, 2016) (cleaned up). “In order to ensure that an assignment is both warranted and
6 permissible under section 708.510(a), courts require that a party seeking an assignment order
7 identify the intended source or sources that are obligated to make payments to the judgment
8 debtor.” *Id.* “A request for a general assignment of all possible funds due to Defendant that does
9 not identify any specific source of money to be assigned shall not be granted.” *Id.* (cleaned up).

10 Mr. Martin has not tried to enforce the writ of execution or noticed any judgment-debtor
11 exams. Thus, considering the factors in § 705.510(c), an assignment seems premature. For
12 example, Mr. Martin may obtain discovery regarding the assets of judgment debtors. Fed. R. Civ.
13 P. 69(b). That process would allow Mr. Martin to identify bank accounts, which are subject to a
14 writ of execution. The court denies his motion without prejudice to his reasserting it later.

15

16 **2. Turnover Order**

17 California law allows the court to order property turned over to a judgment creditor:

18 If a writ of execution is issued, the judgment creditor may apply to the court . . . for an
19 order directing the judgment debtor to transfer to the levying officer either or both of the
20 following: (1) Possession of the property sought to be levied upon if the property is sought
21 to be levied upon by taking it into custody; (2) Possession of documentary evidence of title
22 to property of or a debt owed to the judgment debtor that is sought to be levied upon. . . .

23 The court may issue an order pursuant to this section upon a showing of need for the order.

24 Cal. Civ. Proc. Code § 699.040.

25 Again, a turnover order is premature. Mr. Martin has not tried to enforce the writ of execution
26 or used the discovery procedures that Rule 69(b) affords. A turnover order is not a substitute for
27 those processes. *Optronix Techs., Inc. v. Ningbo Sunny Elec. Co., Ltd.*, No. 5:16-cv-06370-EJD,
28 2020 WL 264400, at *2 (N.D. Cal. Jan. 17, 2020). Moreover, Mr. Cowan contends that the

1 property at his rented office is not his.⁴ Discovery will identify assets that are. And fundamentally,
2 Mr. Martin has not shown need, such as dilatory tactics that might militate in favor of a turnover
3 order. Cal. Civ. Proc. Code § 699.040(b); *UMG Recordings, Inc. v. BCD Music Group, Inc.*, No.
4 CV 07-05808 SJO (FFMx), 2009 WL 2213678, at *4 (C.D. Cal. July 9, 2009) (judgment debtor
5 refused to pay the judgment; the court held that a turnover order would “help curtail [the judgment
6 debtor’s] dilatory tactics.”) There is no outright refusal here. Indeed, Mr. Cowan wants to
7 negotiate payment within his means.⁵

8
9 **3. Civil Contempt**

10 Mr. Martin asks the court to hold Mr. Cowan in civil contempt.⁶ “Civil contempt is
11 characterized by the court’s desire to compel obedience to a court order, or to compensate the
12 contemnor’s adversary for the injuries which result from the noncompliance.” *Falstaff Brewing*
13 *Corp. v. Miller Brewing Co.*, 702 F.2d 770, 778 (9th Cir. 1983) (citation omitted). Mr. Cowan
14 wants to address the debt and has not disobeyed court orders. There is no conduct here that
15 compels an order of contempt. *Cf. Adriana Intern. Corp. v. Thoeren*, 913 F.2d 1406, 1413 (9th
16 Cir. 1990) (party “continually disobeyed court orders and acted in willful disruption of the
17 discovery process”); *Facebook, Inc. v. Power Ventures, Inc.*, No. 08-CV-05780-LHK, 2017 WL
18 3394754, at *9–10 (N.D. Cal. Aug. 8, 2017) (four court orders to pay discovery sanctions).

19
20 **CONCLUSION**

21 The court denies the motions without prejudice.

22 **IT IS SO ORDERED.**

23 Dated: July 15, 2021



24 LAUREL BEELER
United States Magistrate Judge

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26 _____
27 ⁴ Opp’n – ECF No. 143 at 2.

28 ⁵ Martin Decl. Ex. 3 – ECF No. 139-3 at 2; Opp’n – ECF No. 142 at 5.

⁶ Mot. – ECF No. 137.