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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

OPTRONIC TECHNOLOGIES, INC,
Plaintiff,
v.
NINGBO SUNNY ELECTRONIC CO.,
LTD., et al.,
Defendants.

Case No. [5:16-cv-06370-EJD](#)

**ORDER GRANTING IN PART,
DENYING IN PART MOTION FOR
ASSIGNMENT AND TURNOVER;
DENYING APPLICATION FOR
IMMEDIATE RESTRAINING ORDER**

Re: Dkt. Nos. 536, 537

The Court now considers Plaintiff Orion’s Motion for Assignment and Turnover (the “Motion”) and Ex Parte Application for Immediate Restraining Order (the “TRO Application”). The facts and legal issues underlying this case are well known to the parties and the Court. The Court has considered the parties’ papers and found that these issues are suitable for decision without oral argument. Civil L.R. 7-1(b). The Court grants the Motion in part and denies it without prejudice in part, and denies the TRO Application without prejudice.

1. Background

A jury found Defendant Ningbo Sunny and two of its subsidiaries liable for various antitrust claims. Dkt. No. 501. The subsidiaries entered bankruptcy proceedings. Dkt. Nos. 511, 512. On January 6, 2020, stay of enforcement under Federal Rule of Civil Procedure 62(a) lifted, and Orion filed the Motion and the TRO Application. Dkt. Nos. 536, 537. The next day the Court issued writs of execution against Ningbo Sunny. Dkt. Nos. 542, 543, 544, 545. The Court declined to rule ex parte on the TRO Application and set a briefing schedule. Dkt. No. 541. The parties stipulated to advance the Motion’s consideration to the same briefing schedule and hearing date as the TRO Application. Dkt. Nos. 546, 547. Ningbo Sunny has neither posted a bond to

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1 stay enforcement per Federal Rule of Civil Procedure 62(b), nor paid any of the judgment. Borden
2 Decl. ¶ 7.

3 2. Assignment

4 The Court first considers Orion’s request for assignment of Ningbo Sunny’s right to
5 payments under accounts receivable in the U.S. and any other payments due or owed to Ningbo
6 Sunny. Under federal law, “procedure on execution [of a money judgment] . . . must accord with
7 the procedure of the state where the court is located, but a federal statute governs to the extent it
8 applies.” Fed. R. Civ. P. 69(a)(1). California law provides “the court may order the judgment
9 debtor to assign to the judgment creditor . . . all or part of a right to payment due or to become
10 due.” Cal. Civ. Proc. Code § 708.510(a). “An assignment order provides an optional method for
11 reaching forms of assignable property that would be subject to levy, such as ‘accounts receivable,
12 general intangibles, judgments, and instruments.’” *SAS Inst. Inc. v. World Programming Ltd.*,
13 2018 WL 6843724, at *2 (C.D. Cal. Mar. 23, 2018) (quoting Legislative Committee Comments to
14 Cal. Civ. Proc. Code § 708.510). “The Court has broad discretion in determining whether to order
15 an assignment.” *Id.* California’s Code of Civil Procedure provides an illustrative list of relevant
16 facts for a court to consider. *Id.* § 708.510(c)(1)-(4). But, “the sole constraints placed on the
17 Court are that the right to payment be assigned only to the extent necessary to satisfy the creditor’s
18 money judgment and that, where part of the payments [is] exempt, the amount of payments
19 assigned should not exceed the difference between the gross amount of the payments and the
20 exempt amount.” *UMG Recordings, Inc. v. BCD Music Grp., Inc.*, 2009 WL 2213678, at *2 (C.D.
21 Cal. July 9, 2009) (quoting *Sleepy Hollow Inv. Co. No. 2 v. Prototek, Inc.*, 2006 WL 279349, at *2
22 (N.D. Cal. Feb. 3, 2006)); *see also SAS Inst.*, 2018 WL 6843724, at *2.

23 District Courts have interpreted the California law as requiring a low evidentiary threshold
24 before ordering assignment. “[W]here a judgment creditor can identify a person or entity which is
25 obligated to make payment to the judgment debtor, and where that ‘right to payment’ is
26 assignable, the right to payment can be assigned from a third-party obligor to the judgment
27 creditor.” *UMG Recordings*, 2009 WL 2213678, at *2 (quoting *Garden City Boxing Club, Inc. v.*

1 *Briano*, 2007 WL 4463264, at *1 (E.D. Cal. Dec. 17, 2007)). “[T]he judgment creditor must
2 provide ‘some evidentiary support’; ‘some degree of concreteness to the expected payment is
3 required.’” *SAS Inst.*, 2018 WL 6843724, at *2 (quoting *Legal Additions LLC v. Kowalski*, 2011
4 WL 3156724, at *2 (N.D. Cal. July 26, 2011)). The judgment creditor must describe source of the
5 right to payment with “sufficient detail so that defendants can file a claim of exemption or other
6 opposition.” *Icho v. PacketSwitch.com, Inc.*, 2012 WL 4343834, at *1 (N.D. Cal. Sept. 21, 2012)
7 (quoting *Blue Grass Mfg. Co. of Lexington, Inc. v. Beyond A Blade, Inc.*, 2011 U.S. Dist. LEXIS
8 70556, at *7 (N.D. Cal. May 5, 2011)). This threshold reflects practical considerations and the
9 California law does not require “detailed evidentiary support that a judgment debtor holds a right
10 to payment from a third party.” *SAS Inst.*, 2018 WL 6843724, at *2 (citing *Legal Additions*, 2011
11 WL 3156724, at *2).

12 Orion asks the Court to assign the accounts receivable and/or any other payments owed by
13 58 entities to Ningbo Sunny. Borden Decl. ¶ 8; Borden Decl. Ex. A. Orion identified these 58
14 entities, based on publicly available U.S. Customs information, as entities that have imported
15 goods from Ningbo Sunny to the United States. Borden Decl. ¶ 8. Ningbo Sunny contends that
16 Orion has not met its evidentiary burden, in part, because Ningbo Sunny only has a current sales
17 relationship with nine of the 58 entities, and only has accounts receivable in the United States with
18 five of those. Ni Decl. ¶ 4. Given this refutation of the circumstantial evidence presented by
19 Orion, the Court finds that Orion has not carried its burden as to the 53 entities without current
20 U.S. accounts receivable. *See SAS Inst.*, 2018 WL 6843724, at *4. However, the Court grants the
21 Motion for assignment as to the five entities with current U.S. accounts receivable: Bushnell
22 Holdings, Celestron, Hawke Sport Optics LLC, Meade Instruments Corp., and Olivon Mfg. Group
23 Ltd. The Motion is otherwise denied without prejudice as to the request for assignment. As Orion
24 identifies additional entities with U.S. accounts receivable owed to Ningbo Sunny, it may seek
25 assignment of those accounts receivable.

26 Ningbo Sunny makes other arguments that Orion has not satisfied its evidentiary burden,
27 but these arguments are not persuasive. It argues (a) that the entities imported goods from Ningbo

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1 Sunny does not indicate that they owe money to Ningbo Sunny, (b) that Orion is not entitled to a
2 generalized assignment, (c) that some of the entities do not appear to be based in the U.S., and (d)
3 that some of the entities did not purchase telescopes but other goods from Ningbo Sunny. That
4 Mr. Ni identified U.S. accounts receivable for five entities negates the first two arguments. As to
5 the third argument, Ningbo Sunny does not put forth any evidence that the five entities identified
6 by Mr. Ni are not U.S. companies. And the fourth argument is irrelevant; Ningbo Sunny’s
7 cabined reading of one sentence of the Motion as limiting the sought-after accounts receivable
8 only to funds related to telescopes conflicts with the Motion as a whole. *See, e.g.*, Mot. at 1:7-8.

9 3. Turnover

10 Next, the Court considers whether to issue a turnover order. California law provides that
11 “[i]f a writ of execution is issued, the judgment creditor may apply to the court . . . for an order
12 directing the judgment debtor to transfer to the levying officer either or both . . . [p]ossession of
13 the property sought to be levied . . . [or] [p]ossession of documentary evidence of title to property
14 of or a debt owed to the judgment debtor.” Cal. Civ. Proc. Code § 699.040(a). Such an order
15 requires “a showing of need.” *Id.* § 699.040(b). Orion seeks an order compelling Ningbo Sunny
16 to turnover to the U.S. Marshall documents identifying the rights to payment subject to the
17 assignment. Orion seeks this remedy “in lieu” of discovery because it “may take months” for
18 Ningbo Sunny to identify its assets. Reply at 8:15-16; Mot. at 4:21-24. Orion misunderstands
19 section 699.040. The statute is not “a discovery provision.” *Icho*, 2012 WL 4343834, at *2. That
20 Orion seeks to have the documents turned over to the U.S. Marshall instead of itself is not material
21 and Orion offers no cases that support that argument. Orion has also not shown any need. Orion
22 has served discovery on Ningbo Sunny, but the responses are not yet due. Borden Decl. ¶ 5.
23 Orion’s speculation that it may take months to obtain necessary information is insufficient. The
24 Court also denies Orion’s request that the Court compel Ningbo Sunny to file with the court every
25 right to payment currently due and within the United States.

26 4. The TRO Application

27 Orion has already brought one application for a restraining order to restrict Ningbo Sunny

1 from removing assets, including accounts receivable, from the United States. Dkt. No. 509. The
2 Court denied it because Orion presented no evidence that Ningbo Sunny was planning to do so.
3 Dkt. Nos. 520, 524. Now, Orion brings the TRO Application seeking to prevent Ningbo Sunny
4 from removing the accounts receivable subject to the Motion’s request for assignment. California
5 Code of Civil Procedure section 708.510(a) provides that where an application for assignment has
6 been made, “the judgment creditor may apply to the court for an order restraining the judgment
7 debtor from assigning or otherwise disposing of the right to payment that is sought to be
8 assigned.” The movant must show “need.” *Id.* § 708.520(b). “Courts have generally taken a
9 fairly lenient view of the circumstances in which a restraining order is appropriate.” *Revenue*
10 *Enhancement Consultants, Inc. v. Mantra Films, Inc.*, 2010 WL 11463905, at *1 (C.D. Cal. July 7,
11 2010). But, the “need” must be more than “speculative.” *SAS Inst.*, 2018 WL 6843724, at *5.

12 The facts presented by Orion in the TRO Application are substantially the same as the facts
13 it raised in the previous application. *Compare* TRO Application at 3-5 *with* Dkt. No. 509 at 4-5.
14 But here, Orion points to a letter from Celestron, one of Ningbo Sunny’s nonparty co-conspirators,
15 to Orion that threatened legal action if Orion attempts to enforce the judgment against Celestron.
16 Borden Decl. Ex. B. The letter does not indicate that Ningbo Sunny is likely to transfer its U.S.
17 accounts receivable to another country. The other evidence presented by Orion concerns the facts
18 supporting the jury’s verdict against Ningbo Sunny. It does not show that Orion needs a TRO
19 now.

20 Orion has a right to collect its money judgment. But it has not shown that its need is more
21 than speculative. Ningbo Sunny has not yet responded to discovery, nor has it otherwise resisted
22 complying with the judgment. If Ningbo Sunny takes actions that meet the low threshold for
23 “need,” then Orion may renew its application. But for now, the TRO Application is denied
24 without prejudice.

25 5. Conclusion and Order

26 For the reasons discussed above, the Motion is granted in part and denied without
27 prejudice part, and the TRO Application is denied without prejudice.

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The Court orders that all accounts, account receivable, rights of payment of money, contingent rights, contract rights, deposits and deposit accounts, claims against third parties, monies due from third parties, due and in favor of and for the benefit of defendant to Defendant/Judgment Debtor Ningbo Sunny Electronic Co., Ltd. (“Judgment Debtor”) from Bushnell Holdings, Celestron, Hawke Sport Optics LLC, Meade Instruments Corp., and Olivon Mfg. Group Ltd. are hereby assigned to Plaintiff/Judgment Creditor Optronic Technologies, Inc. (“Orion”) up to the amount of the partial judgment entered in this action in favor of Orion and against Judgment Debtor on December 5, 2019 (Docket No. 518).

IT IS SO ORDERED.

Dated: January 17, 2020


EDWARD J. DAVILA
United States District Judge