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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JOAN BROWN KEARNEY,
12 Plaintiff,
13 v.
14 FOLEY & LARDNER, et al.,
15 Defendants.

Case No.: 05-cv-02112-AJB-JLB

**ORDER GRANTING MICHAEL T.
MCCARTY'S MOTION FOR A
JUDGMENT DEBTOR EXAM AND
PRODUCTION OF DOCUMENTS**

[ECF No. 338]

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18 On May 20, 2019, Defendant and Judgment Creditor Michael T. McCarty filed a
19 Motion for a Judgment Debtor Exam and Production of Documents from Plaintiff and
20 Judgment Debtor Joan Brown Kearney. (ECF No. 338.) For the reasons set forth below,
21 the Court **GRANTS** Judgment Creditor's motion.

22 **I. BACKGROUND**

23 The District Court and the Ninth Circuit Court of Appeals have issued four orders
24 awarding costs and fees against Judgment Debtor in favor of Judgment Creditor:

- 25 1. October 29, 2008 Order awarding \$19,741.00 in attorney's fees to Judgment
26 Creditor on his anti-slap motion (ECF No. 88);
27 2. October 7, 2011 Order by Ninth Circuit awarding \$5,794.00 in attorney's
28 fees to Judgment Creditor (ECF No. 146);

1 California Code of Civil Procedure § 708.110 provides:

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

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

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

14 (d) The judgment creditor shall personally serve a copy of the order on the
15 judgment debtor not less than 10 days before the date set for examination.
16 Service shall be made in the manner specified in Section 145.10. Service of
17 the order creates a lien on the personal property of the judgment debtor for a
18 period of one year from the date of the order unless extended or sooner
19 terminated by the court.

20 (e) The order shall contain the following statement in 14-point boldface type
21 if printed or in capital letters if typed: “NOTICE TO JUDGMENT DEBTOR.
22 If you fail to appear at the time and place specified in this order, you may be
23 subject to arrest and punishment for contempt of court and the court may
24 make an order requiring you to pay the reasonable attorney’s fees incurred
25 by the judgment creditor in this proceeding.”

26 Cal. Civ. Proc. Code § 708.110(a)–(e). Additionally, California Code of Civil Procedure
27 § 491.150(b) provides:

28 (b) A person sought to be examined may not be required to attend an
examination before a court located outside the county in which the person
resides or has a place of business unless the distance from the person’s place
of residence or place of business to the place of examination is less than 150
miles.

Cal. Civ. Proc. Code § 491.150(b).

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1 **B. Analysis**

2 Judgment Creditor requests an order requiring Judgment Debtor to appear and
3 furnish information to aid in enforcement of the money judgment. (ECF No. 338.)

4 Judgment Creditor has filed a declaration and supporting evidence to establish the
5 requirements of: (1) California Civil Procedure Code § 708.110(a) that Judgment Debtor
6 owes Judgment Creditor an unpaid debt; (2) California Civil Procedure Code
7 § 708.110(b) that he has not examined Judgment Debtor within the last 120 days; and (3)
8 California Civil Procedure Code § 409.150(b) that Judgment Debtor resides in the county
9 where the court is located. (ECF No. 338-1 ¶¶ 6–7.)

10 **III. CONCLUSION**

11 Based on the foregoing, Judgment Creditor’s Motion for a Judgment Debtor Exam
12 and Production of Documents is **GRANTED**. Accordingly, **IT IS HEREBY ORDERED**:

- 13 1. Judgment Debtor shall appear on **June 10, 2019**, at **10:00 AM** in the Jury
14 Assembly Room, Room 203, James M. Carter & Judith N. Keep United States
15 Courthouse, 333 West Broadway, San Diego, California 92101, to furnish
16 information to aid in enforcement of the money judgment against Judgment
17 Debtor;
- 18 2. Judgment Debtor shall bring with her to the judgment debtor exam all records,
19 documents, statements, files, or other communications concerning, relating to,
20 referring to, describing, or evidencing any and all of Judgment Debtor’s assets
21 and/or sources of income, either in Judgment Debtor’s name or in which
22 Judgment Debtor has a financial interest, including:
- 23 a. Cash;
 - 24 b. Bank accounts, savings and loan accounts, credit union accounts,
25 and other financial institution accounts;
 - 26 c. Automobiles, other vehicles, and boats;
 - 27 d. Real estate; and

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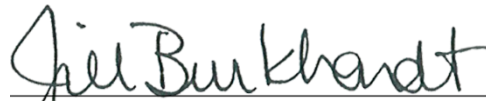
1 e. Other personal property, excluding furniture and furnishings,
2 appliances, and clothing; and

3 3. Judgment Creditor must personally serve this order upon Judgment Debtor
4 within **ten days** before the date set for the examination and must file a
5 certificate of service with the Court.

6 **NOTICE TO JUDGMENT DEBTOR: IF YOU FAIL TO APPEAR AT THE**
7 **TIME AND PLACE SPECIFIED IN THIS ORDER, YOU MAY BE SUBJECT TO**
8 **ARREST AND PUNISHMENT FOR CONTEMPT OF COURT AND THE COURT**
9 **MAY MAKE AN ORDER REQUIRING YOU TO PAY THE REASONABLE**
10 **ATTORNEYS' FEES INCURRED BY THE JUDGMENT CREDITOR IN THIS**
11 **PROCEEDING.¹**

12 **IT IS SO ORDERED.**

13 Dated: May 24, 2019

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15 Hon. Jill L. Burkhardt
16 United States Magistrate Judge

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¹ This notice is furnished pursuant to California Code of Civil Procedure § 708.110(e).