

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

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

----oo0oo----

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).<sup>1</sup>) 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 <sup>1</sup> 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.

1 Dated: March 9, 2017



2 WILLIAM B. SHUBB  
3 UNITED STATES DISTRICT JUDGE  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28