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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 UMG RECORDINGS, INC.,) NO. CV 07-05808 SJO (FFMx)
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12 Plaintiff,)
13 v.) ORDER GRANTING PLAINTIFF'S MOTION
14 BCD MUSIC GROUP, INC.,) FOR ASSIGNMENT OF RIGHTS,
15 Defendant.) RESTRAINING ORDER, AND TURNOVER
) ORDER
) [Docket No. 215]

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17 This matter is before the Court on Plaintiff UMG Recordings, Inc.'s ("UMG") Motion for
18 Assignment of Rights, Restraining Order, and Turnover Order, filed June 1, 2009. Defendant BCD
19 Music Group, Inc. ("BCD") filed an Opposition, to which UMG replied. The Court found this matter
20 suitable for disposition without oral argument and vacated the hearing set for July 6, 2009. See
21 Fed. R. Civ. P. 78(b). Because of the following reasons, UMG's Motion is GRANTED.

22 I. BACKGROUND

23 In January 2009, pursuant to UMG and BCD's settlement agreement, BCD stipulated to an
24 entry of judgment against it in the amount of \$7.2 million, for willful infringement of 43 of UMG's
25 copyrighted sound recordings. (Judgment, Docket No. 199.) As part of the settlement agreement,
26 UMG agreed to refrain from enforcing the judgment against BCD if it paid UMG \$2.2 million,
27 consisting of \$1 million on or before March 12, 2009, and an additional \$100,000 per month for
28 the subsequent twelve months. (Tr. 5:22-6:2, Jan. 12, 2009.) UMG and BCD agreed that "in the
event that at some point during the payment process the defendant is late on a payment, the

1 entire judgment would then become fully enforceable" (Tr. 6:20-25, Jan. 12, 2009.) UMG
2 asserts, and BCD does not deny, that BCD failed to make any payments to UMG under the
3 settlement agreement and now has failed to make any payment in fulfillment of the judgment
4 against it. (See Pl.'s Mem. P. & A. 2; Def.'s Opp'n 2 (noting that UMG has failed to collect any of
5 the judgment against BCD because of "deficiencies" in UMG's request).)

6 Due to BCD's failure to make the required payments to UMG, UMG filed a Motion for
7 Assignment of Rights, Restraining Order, and Turnover Order seeking to enforce the judgment.
8 (See Pl.'s Apr. 14, 2009 Mot..) The Court denied without prejudice UMG's request for an
9 assignment of rights and a restraining order due to the general nature of the request and lack of
10 specificity in regard to the assets UMG sought. (Order of May 22, 2009 at 3-4.) Additionally, the
11 Court denied without prejudice the turnover order request as UMG failed to obtain a writ of
12 execution before filing the motion. *Id.* In the instant Motion, UMG seeks to cure any deficiencies
13 in its original motion in order to reach assets that may fulfill some of the \$7.2 million judgment
14 against BCD.

15 II. DISCUSSION

16 The execution of final judgments is governed by Federal Rule of Civil Procedure ("Rule")
17 69(a), which provides: "A money judgment is enforced by a writ of execution, unless the court
18 directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid
19 of judgment or execution—must accord with the procedure of the state where the court is located,
20 but a federal statute governs to the extent it applies." Fed. R. Civ. P. 69(a). The California Code
21 of Civil Procedure (the "Code") provides that "after entry of a money judgment, a writ of execution
22 shall be issued by the clerk of the court upon application of the judgment creditor" Cal. Code
23 Civ. P. § 699.510. The Code further provides procedures for the assignment of assets, issuance
24 of restraining orders, and issuance of turnover orders as discussed in more detail below.

25 A. Assignment Order

26 "Upon application of the judgment creditor on noticed motion, the court may order the
27 judgment debtor to assign to the judgment creditor . . . all or part of a right to payment due or to
28 become due, whether or not the right is conditional upon future developments." Cal. Code Civ.

1 P. § 708.510. "[I]n determining whether to order an assignment or the amount of an assignment
2 pursuant to subdivision (a), the court may take into consideration all relevant factors," including
3 "the amount remaining due on the money judgment . . . [and] [t]he amount being or to be received
4 in satisfaction of the right to payment that may be assigned." §§ 708.510(c)(3)-(4). "A right to
5 payment may be assigned pursuant to this article only to the extent necessary to satisfy the
6 money judgment." § 708.510(d). "Although the Court may take into consideration all relevant
7 factors, the sole constraints placed on the Court are that the right to payment be assigned only
8 to the extent necessary to satisfy the creditor's money judgment and that, where part of the
9 payments are exempt, the amount of payments assigned should not exceed the difference
10 between the gross amount of the payments and the exempt amount." *Sleepy Hollow Inv. Co. No.*
11 *2 v. Prototek, Inc.*, No. 03-4792, 2006 U.S. Dist. LEXIS 35479, at *6 (N.D. Cal. Feb. 3, 2006). The
12 California Legislature explained in creating § 708.510 that it "provides a new procedure for
13 reaching certain forms of property that cannot be reached by levy under writ of execution It
14 also provides an optional procedure for reaching assignable forms of property that are subject to
15 levy, such as accounts receivable This remedy may be used alone or in conjunction with
16 other remedies provided in this title for reaching rights to payment, such as execution"
17 Legislative Committee Comment to Cal. Code. Civ. P. § 708.510.

18 In its original motion, UMG requested an assignment of "all accounts, accounts receivable,
19 rights to payment of money, contract rights, rights to payment of money from third parties,
20 contingent rights, deposits and deposit accounts, claims against third parties, monies due from
21 third parties, due and in favor of and for the benefit of [BCD] or any of [BCD]'s partners, assignees,
22 and other persons acting on his behalf." (Pl.'s [Proposed] Order 1-2, Apr. 14, 2009.) The Court
23 rejected UMG's assignment request because of its generality and failure to identify any specific
24 assets. See Order of May 22, 2009 at 3; *Garden City Boxing Club, Inc. v. Briano*, No. 06-1270,
25 2007 U.S. Dist. LEXIS 95086, at *3-4 (E.D. Cal. Dec. 13, 2007) (request for a "general assignment
26 of funds" is not sufficient to allow the court to consider the factors for assignment listed in
27 § 708.510(c)). The *Garden City* court explained that "where a judgment creditor can identify a
28 person or entity which is obligated to make payment to the judgment debtor, and where that 'right

1 to payment' is assignable, the right to payment can be assigned from a third party obligor to the
2 judgment creditor." *Id.* at *4 (citing *Quaestor Invs., Inc. v. State of Chiapas*, No. CV-95-6723 JGD
3 (AJWx), 1997 U.S. Dist. LEXIS 24271, at *15-16 (C.D. Cal. Aug. 27, 1997)) (emphasis in original).

4 In the instant Motion, UMG has provided the Court with a list of specific third parties from
5 which it seeks the assignment of payment rights and accounts receivable. (See Pl.'s Mot. ¶ 1;
6 Pl.'s Mem. P. & A. 3.) UMG explains that these entities are "probable distributors, purchasers
7 and/or customers of the Defendant's products," and "would ostensibly owe BCD for the acquisition
8 of digital rights, licensing of certain songs and compositions and other rights." *Id.* Notably, BCD
9 does not contest that the companies UMG identified owe payments to BCD, and instead argues
10 only that UMG's list is "speculative" and was "apparently developed with no evidentiary support."
11 (See Def.'s Opp'n. 4.) However, the legal standard imposed by § 708.510 does not obligate UMG
12 to provide detailed evidentiary support for its request. See § 708.510(a). Moreover, nearly six
13 months after BCD stipulated to the entry and payment of the \$7.2 million judgment, BCD continues
14 to ignore its obligations to compensate UMG for its illegal infringement activity. (See Judgment,
15 Docket No. 199; Pl.'s Mem. P & A. 2; Def.'s Opp'n 2.) As BCD has given the Court no reason to
16 doubt that the entities UMG identified owe payments to BCD, and in light of BCD's blatant
17 disregard for its obligation to satisfy the judgment against it, the Court GRANTS UMG's Motion for
18 an assignment order, as specified below.

19 B. Restraining Order

20 "When an application is made pursuant to § 708.510 or thereafter, the judgment creditor
21 may apply to the court for an order restraining the judgment debtor from assigning or otherwise
22 disposing of the right to payment that is sought to be assigned The court may issue an order
23 pursuant to this section upon a showing of need for the order." Cal. Code Civ. P. § 708.520.
24 Courts have issued restraining orders "so that [the assigned rights to payment] might be available
25 for satisfaction of the judgment." See *Sleepy Hollow, Inv. Co. No. 2*, 2006 U.S. Dist. LEXIS 35479,
26 at *9.

27 Here, BCD's conduct in defaulting on the payment program under the settlement
28 agreement, and refusing to voluntarily satisfy the judgment against it, demonstrates a need to

1 protect the assigned rights to payment from transfer or disposition by BCD. Accordingly, the Court
2 GRANTS UMG's Motion for a restraining order, as specified below.

3 C. Turnover Order

4 "If a writ of execution is issued, the judgment creditor may apply to the court . . . for an order
5 directing the judgment debtor to transfer to the levying officer either or both of the following: (1)
6 possession of the property sought to be levied upon if the property is sought to be levied upon by
7 taking it into custody; (2) possession of documentary evidence of title to property or a debt owed
8 to the judgment debtor that is sought to be levied upon. . . . The court may issue an order
9 pursuant to this section upon a showing of need for the order." Cal. Code Civ. P. § 699.040.

10 The Court denied UMG's first motion for a turnover order because UMG had failed to meet
11 § 699.040's procedural requirement of obtaining a writ of execution. See Cal. Code Civ. P. §
12 699.040. UMG has since obtained the necessary writ of execution (see Writ of Execution of
13 May 15, 2009), and now moves for a turnover order covering "any and all documentary evidence
14 of any accounts, including but not limited to, any checks, drafts, money orders, deposits, deposit
15 accounts, books, records, papers or files, listing of accounts, accounts receivable ledgers or
16 journals" linked to the accounts and accounts receivable identified in the assignment order. (Pl.'s
17 Mot. ¶ 3; Pl.'s Reply 9.) As UMG notes, a turnover order is necessary to prevent BCD from
18 frustrating the purpose behind the assignment order, and to "put teeth in an assignment order in
19 compelling the debtor to turn over the profits and proceeds of the receivables." (Pl.'s Mem. P. &
20 A. 7; Pl.'s Reply 9.) The Court finds a turnover order appropriate to help curtail BCD's dilatory
21 tactics and give effect to the assignment order, and finds that BCD's behavior in refusing to pay
22 any portion of the settlement amount or judgment suffices to demonstrate the need for such an
23 order. Thus, the Court GRANTS UMG's Motion for a turnover order, as specified below.

24 D. Personal Jurisdiction Over the Assignable Assets

25 BCD objects to UMG's Motion on the ground that "to the extent UMG's proposed Order
26 purports to require out-of-state third parties to deliver or pay over any property directly to UMG,
27 UMG has failed to demonstrate that this Court has personal jurisdiction over such parties to issue
28 such an order." (Def.'s Opp'n 5.) BCD contends that "to the extent [the Court's Order] requires

1 nonresident third persons to assign rights to payment without a demonstration that this Court
2 possesses the requisite personal jurisdiction over them, [the Order] would be null and void." *Id.*
3 However, the assignment order does not require any third parties to assign rights to payment, but
4 rather requires BCD itself to assign its rights to payment from third parties to UMG. When a court
5 has personal jurisdiction over an individual defendant, it also has jurisdiction over the defendant's
6 property. See *Fall v. Eastin*, 215 U.S. 1, 8 (1909); see also *Legion for the Survival of Freedom*
7 *v. Liberty Lobby, Inc.*, 2003 Cal. App. Unpub. LEXIS 11549, at *13 (Cal. Ct. App. 2003)
8 (unpublished) (upholding lower court's assignment under § 708.510 of out-of-state property,
9 explaining that "it is settled in this state that courts have the power to indirectly affect out-of-state
10 property by means of a decree, based on personal jurisdiction over the parties, which determines
11 the parties' personal rights or equities in that property"). Further, BCD's citation to *Hardy v. Hardy*,
12 164 Cal. App. 2d 77 (Cal. Ct. App. 1958), is unconvincing. In *Hardy*, the court in a divorce
13 proceeding imposed a lien on an out-of-state spendthrift trust to which the husband-defendant was
14 the beneficiary, to secure payment to the wife-plaintiff of alimony, child support, court costs and
15 attorney fees. *Id.* The reviewing court held that the lower court lacked jurisdiction over the trust
16 because in that particular case, "the purported imposition of the lien [could] in no way be
17 considered other than as an attempt by a court of this state to affect title to land in Illinois." *Id.* at
18 79. However, the court also explained that "a court having the parties before it can, in a proper
19 case, through its coercive powers, compel them to act in relation to property not within the
20 territorial jurisdiction of the court." *Id.* (citing *Fall v. Eastin*, 215 U.S. at 8). It is unclear exactly how
21 *Hardy* affects the instant Motion, and BCD offers no explanation. Moreover, *Hardy* did not
22 concern an assignment order pursuant to § 708.510. Because there is no dispute that the Court
23 has jurisdiction over BCD in the present matter, the Court thus has "the power to indirectly affect
24 out-of-state property by means of a decree, based on personal jurisdiction over the parties, which
25 determines the parties' personal rights or equities in that property." See *Legion for the Survival*
26 *of Freedom*, 2003 Cal. App. Unpub. LEXIS 11549, at *13. Accordingly, the Court may properly
27 order BCD to assign its rights to payment from out-of-state third parties.

28 III. Ruling

1 For the foregoing reasons, the Court GRANTS UMG's Motion for Assignment of Rights,
2 Restraining Order, and Turnover Order. The Court hereby ORDERS the following:

3 (1) All accounts, accounts receivable, rights to payment of money, contract rights, rights to
4 payment of money from third parties, contingent rights, deposits and deposit accounts,
5 claims against third parties, monies due from third parties listed below as follows:

- 6 a. Super D, 18722 A Gillette, Irvine, CA 92614
- 7 b. Best Buy, 7601 Penn Avenue South, Richfield, MN 55423
- 8 c. Fye Entertainment (Transworld Entertainment Corporation), 38 Corporate
9 Circle, Albany NY 12203
- 10 d. Amazon.com, 1516 Second Avenue, Seattle, WA 98101
- 11 e. Ioda, 539 Bryant Street, Suite 303, San Francisco, CA 94107
- 12 f. Music Gremlin, 601 McCarthy Blvd., Milpitas, CA 95035
- 13 g. Medianet Digital, 85 10th Avenue, Third Floor, New York, NY 10011
- 14 h. Emusic, 244 5th Avenue, Suite 2070, New York, NY 10001
- 15 i. Koch Entertainment Distribution, 22 Harbor Park Drive, Port Washington, NY
16 11050
- 17 j. The Orchard, 23 East 4th Street, New York, NY 10003

18 due and in favor of and for the benefit of Defendant BCD, or any of Defendant's partners,
19 assignees, and other persons acting on its behalf, due Defendant, are hereby ASSIGNED
20 to Plaintiff UMG, care of its attorney, David J. Cook, Cook Collection Attorneys, P.L.C., 165
21 Fell Street, Third Floor, San Francisco, CA 94102 for purposes of payment of the Judgment
22 in the amount of \$7,200,000.00, plus interest and costs as may be allowed. The
23 Assignment shall remain in place until such time as the payment is paid in full, including
24 accrued interest.

25 (2) Defendant BCD is hereby stayed, prohibited, and enjoined from cashing, negotiating,
26 advancing, collecting, any and all accounts, accounts receivable, rights to payment of
27 money, claims for payment of money due from third parties, or other rights subject to the
28 assignment herein.

1 (3) Defendant BCD shall deliver all checks, cash, notes, instruments, deposits, deposit
2 accounts, drafts, and accounts receivable ledgers or journals, pertaining to the items
3 identified in paragraph (1) to the Marshal, Central District of California, 255 E. Temple
4 Street, Room 346, Third Floor, Los Angeles, CA 90012-4798.

5 IT IS SO ORDERED.

6 Dated: July 9, 2009.



7 S. JAMES OTERO
8 UNITED STATES DISTRICT JUDGE
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