

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH DANIEL NEVIS,

Plaintiff,

v.

RIDEOUT MEMORIAL HOSPITAL, et
al.,

Defendants.

No. 2:17-cv-02295-DAD-AC

ORDER DENYING DEFENDANT
AMTRAK'S MOTION TO COMPEL
ACKNOWLEDGMENT OF SATISFACTION
OF THE JUDGMENT

(Doc. No. 368)

The matter is before the court on the motion to compel plaintiff's acknowledgement of satisfaction of the judgment pursuant to California Code of Civil Procedure § 724.050 filed by defendant National Railroad Passenger Corporation ("Amtrak"). (Doc. No. 368.) On March 15, 2023, defendant Amtrak's motion was taken under submission on the papers. (Doc. No. 385.) For the reasons explained below, the court will deny the motion.

BACKGROUND

On October 28, 2022, a jury verdict was rendered in this case in favor of plaintiff. (Doc. No. 331.) On December 22, 2022, the court entered judgment. (Doc. Nos. 354, 355.) On February 3, 2023, defendant Amtrak filed a motion to stay enforcement of the judgment. (Doc. No. 365.) A week later, on February 9, 2023, defendant Amtrak filed the pending motion to compel plaintiff's acknowledgement of satisfaction of the judgment. (Doc. No. 368.) On

1 February 10, 2023, defendants Dr. Hector Lopez and Rideout Memorial Hospital (“Rideout”)
2 joined in defendant Amtrak’s pending motion to compel. (Doc. Nos. 370, 375.)

3 On February 15, 2023, the court stayed execution of the judgment until the court had ruled
4 on defendant Amtrak’s motion to compel or until “the parties reach an agreement regarding
5 payment of the judgment and defendant Amtrak withdraws” the motion to compel. (Doc. No.
6 379.) On March 8, 2023, plaintiff filed an opposition to the pending motion to compel. (Doc.
7 No. 384.) Defendants elected not to file any reply brief.

8 **LEGAL STANDARD**

9 “The procedure on execution—and in proceedings supplementary to and in aid of
10 judgment or execution—must accord with the procedure of the state where the court is located,
11 but a federal statute governs to the extent it applies.” Fed. R. Civ. P. 69(a)(1). Because this court
12 is in California, California law applies to procedures concerning the execution of the judgment.

13 Under California law, “[w]hen a money judgment is satisfied, the judgment creditor
14 immediately shall file with the court an acknowledgment of satisfaction of judgment.” Cal. Civ.
15 Proc. Code § 724.030. “If the judgment creditor fails to file an acknowledgment of satisfaction of
16 judgment, the judgment debtor may serve the judgment creditor with a written demand for the
17 judgment creditor to file an acknowledgment of satisfaction with the court.” *Gray1 CPB, LLC v.*
18 *SCC Acquisitions, Inc.*, 233 Cal. App. 4th 882, 898 (2015) (citing Cal. Civ. Proc. Code §
19 724.050(a)). California Code of Civil Procedure § 724.050(b) sets forth the language that must
20 be included in a written demand served on a judgment creditor.¹ “If ‘without just cause,’ the
21 judgment creditor fails to comply within 15 days of the demand, the judgment creditor is liable to
22 the judgment debtor for \$100 plus costs, attorney fees, and damages sustained by reason of the
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24 ¹ “The demand shall include the following statement: ‘Important warning. If this judgment has
25 been satisfied, the law requires that you comply with this demand not later than 15 days after you
26 receive it. If a court proceeding is necessary to compel you to comply with this demand, you will
27 be required to pay my reasonable attorney’s fees in the proceeding if the court determines that the
28 judgment has been satisfied and that you failed to comply with the demand. In addition, if the
court determines that you failed without just cause to comply with this demand within the 15 days
allowed, you will be liable for all damages I sustain by reason of such failure and will also forfeit
one hundred dollars to me.’” Cal. Civ. Proc. Code § 724.050(b).

1 failure to comply.” *Gray I*, 233 Cal. App. 4th at 898 (quoting Cal. Civ. Proc. Code § 724.050(e)).
 2 In addition, “the person making the demand may apply to the court on noticed motion for an
 3 order requiring the judgment creditor to comply with the demand.” Cal. Civ. Proc. Code §
 4 724.050(d). “If the court determines that the judgment has been satisfied and that the judgment
 5 creditor has not complied with the demand, the court shall either (1) order the judgment creditor
 6 to comply with the demand or (2) order the court clerk to enter satisfaction of the judgment.” *Id.*

7 ANALYSIS

8 In its pending motion, defendant Amtrak contends that all defendants have issued payment
 9 to plaintiff in full satisfaction of the judgment entered by the court in this case. (Doc. No. 368 at
 10 3–6.) Specifically, defendant Amtrak contends that, on January 13, 2023, it “caused a courier to
 11 personally serve Plaintiff’s counsel with three checks totaling \$6,240,000.00 in full satisfaction of
 12 the judgment owed to Plaintiff.” (*Id.* at 4.) Defendant Amtrak attached copies of those three
 13 checks—one from each defendant—that were all made payable to “Joseph Daniel Nevis,” along
 14 with a proof of service.² (Doc. Nos. 368-6, 368-7.) As defendant Amtrak argues, because
 15 “[p]laintiff’s receipt of the checks on January 13, 2023[] constituted full satisfaction of the
 16 judgment owed,” plaintiff’s counsel was obligated “to immediately file an acknowledgement of
 17 full satisfaction of judgment in compliance with California Code of Civil Procedure section
 18 724.030,” but plaintiff’s counsel “failed to do so.” (Doc. No. 368 at 5.) As a result, on January
 19 23, 2023, defendant Amtrak issued a demand letter to plaintiff’s counsel advising him that he was
 20 required “to file an acknowledgement of satisfaction of judgment no later than 15 days following
 21 receipt of the [demand] letter.” (*Id.*) Seventeen days after issuing that demand, on February 9,
 22 2023, defendant Amtrak filed the pending motion to compel acknowledgment of satisfaction of
 23 the judgment. (*Id.* at 5–6.)

24 Plaintiff’s counsel opposes the pending motion, arguing that after the court entered
 25 judgment, “[p]laintiff moved forward to collect and execute the full judgment against Defendant
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27 ² The first check sent on behalf of defendant Dr. Lopez was in the amount of \$2,405,000; the
 28 second check sent on behalf of defendant Amtrak was in the amount of \$1,430,000; the third
 check sent on behalf of defendant Rideout was in the amount of \$2,405,000. (Doc. No. 368-6.)

1 Amtrak under the doctrine of Joint and Several Liability,” but counsel for defendant Amtrak
 2 decided to deliver the three checks on behalf of each defendant to plaintiff’s counsel on January
 3 13, 2023. (Doc. No. 384 at 2.) Plaintiff’s counsel contends that he rejected the checks sent by
 4 defendants because none were negotiable or payable to McElfish Law Firm PC, which he argues
 5 is necessary for him to place the funds into a client trust account pursuant to the Rules of
 6 Professional Conduct. (*Id.*) In this regard, plaintiff’s counsel argues he has a fiduciary duty to
 7 his client to place the funds in a client trust account and to adhere to his duties to “third party lien
 8 holders” that must be paid from those funds. (*Id.* at 4–5.) Specifically, plaintiff’s counsel argues
 9 that he “would be in violation of the Professional Rules of Responsibility 1.15 Safekeeping
 10 Property, if he is unable to deposit the checks received from all counsels.” (*Id.* at 4.) In addition,
 11 plaintiff’s counsel explains that he returned all three checks to defendant Amtrak with a letter
 12 from an attorney, Kevin Gerry, who, according to plaintiff’s counsel, is now “associated into the
 13 case to assist Mr. McElfish.” (Doc. No. 384 at 5–6.)³ In that letter, dated February 2, 2023,
 14 attorney Gerry explained to defendant Amtrak’s counsel that the checks should have been made
 15 payable to plaintiff’s counsel’s law firm “to properly comply with his professional responsibilities
 16 to deposit the checks in his client trust account, and to promptly disburse the funds to all
 17 applicable parties, including the payments for outstanding litigation costs and 3rd party liens.”
 18 (Doc. No. 365-9 at 2.) Most importantly, however, plaintiff’s counsel maintains that defendant
 19 Amtrak has not shown the “critical element” required by California Code of Civil Procedure §
 20 724.050—i.e., that the judgment was satisfied. (*Id.* at 3.) Plaintiff acknowledges that the parties
 21 have taken some steps to ensure that the required payments are made, but plaintiff maintains that
 22 the payments have not yet been fully received and verified. (*Id.* at 3.) Plaintiff’s counsel further
 23 states that he “assures this Court that once all payments owed are received and verified, Plaintiff
 24 will indeed file an acknowledgment[] of judgment[.]” (*Id.* at 3–4.)

25 As noted, defendants elected not to file a reply in support of the pending motion,
 26 apparently relying on the arguments presented in Amtrak’s motion, i.e., that its delivery of three

27 ³ The letter from attorney Gerry was attached to defendant Amtrak’s motion to stay execution of
 28 the judgment. (Doc. No. 365-9.)

1 checks totaling the amount owed as stated in the court’s December 22, 2022 judgment to
2 plaintiff’s counsel on January 13, 2023, amounted to satisfaction of the judgment and obligated
3 plaintiff to file an acknowledgment of that satisfaction. (Doc. No. 368 at 3–4) (citing Cal. Civ.
4 Proc. Code § 724.010(a) (“A money judgment may be satisfied by payment of the full amount
5 required to satisfy the judgment[.]”)). However, “[w]here a money judgment is satisfied by
6 payment to the judgment creditor by check or other form of noncash payment that is to be
7 honored upon presentation by the judgment creditor for payment, the obligation of the judgment
8 creditor to give or file an acknowledgment of satisfaction of judgment *arises only when the check*
9 *or other form of noncash payment has actually been honored upon presentation for payment.*”
10 Cal. Civ. Proc. Code § 724.010(c) (emphasis added). California Code of Civil Procedure §
11 724.010(c) specifically “addresses the timing of a judgment creditor’s obligation to file an
12 acknowledgment of satisfaction, not when a judgment is deemed to have been fully satisfied.”
13 *Gray1*, 233 Cal. App. 4th at 893; *see also Long v. Cuttle Const. Co.*, 60 Cal. App. 4th 834, 837
14 (1998) (“The time of payment need not be the same as the time the judgment creditor is obliged
15 to give an acknowledgment of the satisfaction of judgment.”) (citing Cal. Civ. Proc. Code §
16 724.010(c)). Because it is undisputed that plaintiff returned the checks to defendant Amtrak on
17 February 2, 2023, and the checks were never presented for payment—let alone honored—no
18 obligation to give or file an acknowledgment of satisfaction of judgment on behalf of plaintiff
19 ever arose. (Doc. Nos. 365-9; 368 at 1; 384 at 2.) For this reason, the court also concludes that
20 defendant Amtrak has failed to establish that the judgment was in fact satisfied. *See*
21 *Conservatorship of McQueen*, 59 Cal. 4th 602, 615 (2014) (explaining that payment tendered by
22 an uncertified check would not constitute satisfaction of judgment for purposes of seeking costs
23 under California Code of Civil Procedure § 685.080, which requires a motion seeking such costs
24 to be made “before judgment is satisfied in full,” if the creditor postponed presenting the check
25 for payment); *see also Hale v. Bohannon*, 38 Cal. 2d 458, 467 (1952) (“The mere giving of a
26 check does not constitute payment . . . And since a check of itself is not payment until cashed the
27 party attempting to prove payment by mere delivery or acceptance must go further and in addition
28 prove that such delivery and acceptance was in accordance with an agreement that it was to be

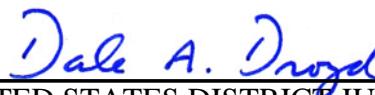
1 accepted as payment.”). Accordingly, defendant Amtrak’s motion to compel will be denied.

2 **CONCLUSION**

3 For the reasons explained above, defendant Amtrak’s motion to compel acknowledgment
4 of satisfaction of judgment (Doc. No. 368) is denied without prejudice.

5 IT IS SO ORDERED.

6 Dated: March 21, 2023

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9 UNITED STATES DISTRICT JUDGE

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