
Tentative Ruling:

The court finds the challenged expenses (\$100.00 clothing expense; \$725.00 transportation and auto expense; and \$100 laundry and cleaning expense) to be necessary for the support of the judgment debtor or her family. The court finds the installment payments, other than the payment for a vehicle in the amount of \$1,181 and the payment to the Franchise Tax Board in the amount of \$100, to be unnecessary for the support of the judgment debtor or her family.

The court finds that monthly income is \$8,341.27 and expenses are \$8,053.89. Disposable income thus amounts to \$287.38/month, or \$66.31/week. The maximum amount that is subject to levy is \$57.46/month.

Creditor is directed to provide a proposed order commensurate with this ruling for the court's signature.

Analysis:

On February 7, 2023, plaintiff Fireside Bank filed a complaint against defendant Melinda J. Darway (now Swenson) for breach of contract, and the common counts of open book account, account stated, money had and received, and goods and merchandise sold and delivered on her default of a loan contract. The total debt at issue was \$10,275.42, plus interest and attorney's fees. On November 27, 2023, the court entered a default judgment in favor of plaintiff, determining the total judgment to be \$11,458.53. On February 21, 2024, a writ of execution issued to the sheriff or marshal of Santa Barbara County for \$11,498.53. An earnings withholding order was served on Lompoc Unified School District. Ms. Darway filed a claim of exemption. The sheriff is currently holding \$0.00.

Ms. Swenson filed a claim of exemption, contending all earnings are exempt. She contends she is paid every monthly. She contends her gross monthly income is \$9,369.25, with a net monthly take-home pay of \$7,341.27. She receives child support of \$1,000, which increases her net monthly take-home to \$8,341.27. Her spouse and four children are dependent on her for support. She contends her monthly expenses amount to \$8,898.26, which exceed her monthly take home pay.

Under the terms of Code of Civil Procedure section 706.050, the maximum amount of disposable earnings of an individual judgment debtor for any workweek that is subject to levy under an earnings withholding order shall not exceed the lesser of the following: (1) Twenty percent of the individual's disposable earnings for that week. (2) Forty percent of the amount by which the individual's disposable earnings for that week exceed 48 times the state minimum hourly wage in effect at

the time the earnings are payable. "Disposable earnings" are those earnings remaining after deduction of any amounts required by law to be withheld. (Code Civ. Proc. § 706.011, subd. (a).) These include deductions for social security, federal and state income taxes, state disability insurance and payments to public employee retirement systems. This exemption is automatic--i.e., no claim of exemption need be made. (Code Civ. Proc., § 706.050.)

In addition to this automatic exemption for nonsupport withholding orders, that portion of an employee's earnings necessary for the support of the judgment debtor or the judgment debtor's family (including a spouse or former spouse) is exempt from nonsupport earnings withholding orders. (Code Civ. Proc. § 706.051, subd. (a), (b).) To obtain this exemption, the judgment debtor must file a claim of exemption with the levying officer. (Code Civ. Proc. § 706.105, subd. (a).) A completed financial statement must be attached to the claim of exemption. The Financial Statement includes 13 discrete categories (including one labeled "miscellaneous") of monthly expenses. The reasonableness of the expenses reported in each category must be assessed. Although the burden of proof lies with the party claiming the exemption, exemption statutes are generally construed in favor of the debtor. (*Kono v. Meeker* (2011) 196 Cal.App.4th 81, 86.)

Here, judgment debtor has filed her claim that a portion of her earnings are necessary for the support of her family, which includes a spouse with no stated income, two adult children (20 years old and 18 years old) who are attending school, and two minor children. The monthly expenses are reported to be as follows:

4. The monthly expenses for me, my spouse, and my other dependents	
a. Rent or house payments and maintenance	4a. \$ 3500.00
b. Food and household supplies	b. \$ 1000.00
c. Utilities and telephone Trash, PG&E, AT&T, Starlink	c. \$ 690.00
d. Clothing	d. \$ 100.00
e. Medical and dental payments	e. \$
f. Insurance (life, health, accident, etc.)	f. \$ 657.29
g. School, child care	g. \$
h. Child, spousal support (prior marriage)	h. \$
i. Transportation & auto expenses (insurance, gas, repair) (list car payments in item	i. \$ 725.00
j. Installment payments (insert total and itemize below in item 5)	j. \$ 2125.97
k. Laundry and cleaning	k. \$ 100.00
l. Entertainment	l. \$
m. Other (specify):	m. \$
n. TOTAL MONTHLY EXPENSES (add a through m): n. \$ 8898.26	

Creditor objects to the \$100.00 clothing expense; \$725.00 transportation and auto expense; and \$100 laundry and cleaning expense and asserts they are not

exempt. There is no precise definition of what is “necessary” for the support of a judgment debtor or his or her family. “Necessary” expenses normally include housing costs, food, insurance, automobile costs, etc. However, the court must consider the circumstances surrounding each individual case—what is “necessary” in some circumstances may be a luxury in others. (See *J.J. MacIntyre Co. v. Duren* (1981) 118 Cal.App.3d Supp. 16, 18 [decided under former CCP § 723.051]; and *Diamond v. Bent* (1957) 157 Cal.App.2d Supp. 857, 859 [decided under former law]--monthly expenses to send judgment debtor's daughters to college found to be reasonable and necessary.) The only claim that may be high is auto expenses, although given insurance and gasoline, this not extraordinary. The court finds these expenses to be necessary for the maintenance of a household of five, and none are unreasonable in amount.

Judgment debtor reports that she makes installment payments on six separate installment accounts totaling \$2,125.97/month. The court finds the car payment to be necessary, as well as the payment to the Franchise Tax Board. There is no basis for elevating the other installment payments over that of the creditor who has obtained a court judgment in its favor. The court thus finds these are not necessary expenses. The monthly expenses for installment payments is thus reduced from \$2,125.97 to \$1,281 (\$1,181 for auto payment and \$100 for Franchise Tax Board payment). In turn, this reduces total monthly expenses to \$8,053.89.

As far as income goes, the creditor argues that debtor's retirement and other deductions are “voluntary deductions and should not be ahead of creditors.” The court finds the deductions to be mandatory (as in the case of retirement contributions to STRS) and otherwise reasonable. Thus, monthly income is \$8,341.27.

Disposable income is \$287.38 (\$8,341.27-\$8,053.89) per month, which works out to \$66.31 per week. The maximum amount of disposable earnings that is subject to levy under an earnings withholding order shall not exceed the lesser of the following: (1) Twenty percent of the individual's disposable earnings for that week. (2) Forty percent of the amount by which the individual's disposable earnings for that week exceed 48 times the state minimum hourly wage in effect at the time the earnings are payable.

The latter option is inapplicable, since this debtor's earnings don't exceed 48 times the state minimum hourly wage. Thus, the court finds that \$57.46/month is the maximum amount of disposable earnings that is subject to levy (\$66.31 x 20% = \$13.26 x 52 weeks divided by 12 months).