

PROPOSED TENTATIVE

On November 17, 1999, plaintiff First Select Corporation filed a complaint against defendant Zayda Deleon (hereafter debtor), and a stipulated judgment was entered on January 6, 2000, for judgment of \$2,095.04 in favor of plaintiff. Based on the second renewal of judgment, filed with this court on April 24, 2017, debtor then owed \$7,395.81. A third renewal of judgment was entered on November 21, 2022, indicating debtor then owed \$11,545.99. Defendant was served with the third renewal of judgment on December 14, 2022. The original plaintiff/creditor assigned the debt to PMGI, LLC (hereafter, assignee creditor), as reflected in the filing made on February 15, 2023. A writ of execution was issued on August 22, 2023, with new costs and accrued interest, indicating debtor now presently owes \$12,472.60.

Debtor has filed a claim of exemption to any wage garnishment. Assignee creditor has filed opposition. Assignee creditor indicates in the Notice of Hearing on Claim of Exemption that it “will not appear at the hearing and submits the issue on the papers filed with the court.” The San Luis Obispo County Sheriff’s Office indicates that it is presently holding \$279.54 from past wage garnishments.

Debtor, in her “Claim of Exemption,” asks the court to exempt all earnings. She is paid every two weeks (meaning she is paid 26 times a year). According to debtor’s financial statement, she has no spouse, and has two children living with her (a son aged 19 and a daughter aged 16). She claims her gross monthly pay is \$4,293.58.¹ Her federal and state withholdings (FICA and SDI) are \$805.56, and her health costs are \$80 a month. Debtor also claims garnishments of \$664.38², meaning her payroll deductions total \$1,549.94, leaving her with a total monthly disposable income of \$2,947.82. She claims her monthly disposable income is reduced by necessary monthly expenses totaling \$2,700³, as follows: 1) \$600 for “food and

¹ The opposition does not challenge this representation; as a result, the court will assume without deciding that this number is correct.

² Debtor is presently subject to five garnishments with a higher priority than the present debt at issue, listed on the Employer’s Return, as follows: two orders for support, one order for taxes, one order for “elder or dependent adult financial abuse”, and one for another debt. At no point does assignee creditor challenge these amounts, or claim they improperly reduce the disposable income calculation.

³ Debtor’s financial declaration is not a model of clarity. Debtor, when listing the amounts paid for each expense category, largely provides numerical ranges, claiming the aggregate amounts (listed in seriatim) total \$2,600. As a representative example, debtor, for “food and household supplies,” contends expenses range between “\$600 - \$400”; for “utilities and telephone,” debtor claims costs range between “\$900 to \$700”; and for “school, childcare,” debtor claims costs range between “\$250 - \$100.” Debtor’s imprecision is counterproductive, and, ultimately, confusing. For clarity, the court will utilize the maximum amount listed by debtor for each category as

household” supplies; 2) \$900 for utilities and telephone; 3) \$150 for clothing; 3) \$250 for insurance (lie, health, and accident); 4) \$200 for transportation and auto expenses (insurance, gas, repair) (this does not include a car payment); 5) \$100 for laundry and cleaning; and 6) \$500 a month for “credit cards.” As to the latter category, debtor claims two credit payments of \$442 and \$100 a month⁴ (although these amounts when added together do not total \$500, this later number will be used as it is not challenged). Debtor offers the following additional explanations to support her claim of exemption: “Support to save for emergencies, to help pay off my credit cards, I don’t want to continue to [unintelligible] my credit cards. The extent money being withheld can help with the rise things[.] It’s becoming difficult to support myself and dependents[.]” No other assets are claimed. Debtor does not indicate any amount she is willing to have garnished.

Before addressing the merits, the court will identify the legal principles that frame the court’s inquiry. Pursuant to 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 garnishment/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; or (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, among other items. This exemption is automatic--i.e., no claim of exemption need be made. (Code Civ. Proc., § 706.050.)

Additionally, a judgment debtors’ earnings that are necessary for the support of the judgment debtor or his or her family are exempt from garnishment. (CCP § 706.051, sub. (a)(1).) This exemption is used to reduce the disposable income amount. 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 of monthly expenses (including one labeled “miscellaneous”). 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.)

the appropriate expense amount used for the calculation; once this is accomplished, the aggregate total is \$2,700, not \$2,600. Accordingly, the \$2,700 figure is the one the court will utilize.

⁴ Of course, \$442 plus \$100 does not equal \$500. The court will nevertheless utilize the \$500 figure for simplicity, because that is the figure debtor utilized.

Here, as noted, the debtor's financial declaration indicates that debtor, who has no spouse and two children, receives disposable monthly income of \$2,947. Assignee creditor does not challenge this amount, and it will therefore act as the court's starting point. Assignee creditor, however, does challenge the following monthly household expenses claimed by debtor as excessive: 1) \$150 for clothing and 2) \$900 for phone and utilities. Additionally, assignee creditor contends that the \$500 for "credit cards" cannot be claimed as a necessary expenses. Assignee credit does not indicate what the new amounts should be, and does not indicate what amount it is willing to accept for garnishment per pay period.

The court rejects assignee creditor's challenge to the \$150 clothing expense, as debtor is responsible for two teenage dependents. While there is no precise definition of what are "necessary" expenses for the support of a judgment debtor and her family, they normally include housing costs, food, insurance, automobile costs, etc., The court is required to consider the circumstances in each case -- what is "necessary" in some circumstances may be a luxury in others. (See, e.g., *J.J. MacIntyre Co. v. Duren* (1981) 118 Cal.App.3d Supp. 16, 18 [decided under former Code Civ. Proc., § 723.05]; see *Diamond Bent* (1957) 157 Cal.App.2d Supp. 857, 859 [decided under former law, and concluding that monthly expenses to send judgment debtor's daughters found to be reasonable and necessary]; see also *Sanker v. Humborg* (1941) 48 Cal.App.2d 205, 208 [miscellaneous expenses for recreation, music lessons, and insurance for debtor's wife and family are necessary].) \$150 for clothing under the circumstances seems reasonable. \$900 for telephone and utilities, on the other hand, seems excessive, even taking into account the presence of two teenagers in the household. This amount is by far the greatest expense listed in the financial declaration, and debtor offers no explanation or justification. The court will reduce this amount by \$300, to \$600 a month.

Assignee creditor's challenge to the \$500 a month for credit card payments (i.e., installment payments on two separate credit card accounts) is also appropriate. A debtor cannot elevate one debt over another via installment payments when no judgment has been secured. These are not necessary expenses and are not included as part of the hardship exemption.

Accordingly, the court finds that the amount of \$2,700, claimed as the total monthly expenses in the financial declaration, should be reduced by \$800 (by \$300 for phone/utility expense and \$500 for credit-card installment payments), reducing monthly expenses from \$2,700 to \$1,900. \$2,947.82 minus \$1,900 leaves a disposable income of \$1,047.82. That being said, the court is persuaded that this amount should be reduced further by \$250 a month, given the current state of inflation, the presence of two teenagers in the household, and taking into account debtor's patent debt-to-income ratio problems. The court is of course sensitive to assignee creditor's right to enforce its debt, while at the same time concerned with undermining debtor's overall long-term financial wellbeing. It would be at best a Pyrrhic victory for assignee creditor

if the court failed to account for debtor's tenuous long-term financial state in determining the appropriate garnishment amount under the circumstances.

Accordingly, the court finds that debtor's disposable monthly income is \$797.82 a month for purposes of determining garnishment ($\$2947.82 - \$1,900 - \$250 = \797.82), which works out to be \$199.45 per week (\$797.82 divided by 4). The maximum amount of disposable earnings that is subject to garnishment for purposes of an earnings withholding order cannot exceed the lesser of the following: 1) twenty percent of the individual's disposable earnings *for that week*; or 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 the earnings are payable.

The latter calculation is inapplicable, for the California state minimum wage at present is \$16 per hour, and the debtor's disposable earnings subject to garnishment per week do not exceed 48 times that amount. Accordingly, the court finds that \$172.85 per month is the maximum amount that can be garnished/levied from debtor's wages, utilizing the 20% calculation, as follows: \$199.45 per week x 20% = \$39.89 per week x 52 weeks = \$2,074.28 (the total amount per year), divided by 12 months = \$172.85. (This calculation can be stated another way, as \$79.78 *per two week pay period* based on wages paid 26 times a year, calculated by the total yearly amount of \$2,074.28, divided by 26).

The record shows that the San Luis Obispo County Sheriff is presently holding \$279.54 on this account. The court orders the Sheriff to give creditor assignee \$172.85 from this amount, and to return the remainder of \$106.69 to debtor.

The court directs PMGI Financial, LLC, as the creditor assignee, to submit to the court a proposed order for signature (commensurate with this order).

It appears the assignee creditor will not appear at the hearing today, as it has submitted the issues on the papers filed with the court. The court directs the clerk to enter this tentative into the court minutes as a final order, and to send the minute order to the parties.