

Re: Claim of Exemption

Date: January 16, 2018

Action Professionals, Inc. (“Plaintiff”) obtained a default judgment against defendant Tiffany Dusi (“Defendant”) in the amount of \$4055.72 in April 2017. As of November 3, 2017, the current amount due including interest and costs is \$4,346.74. Plaintiff is attempting to enforce the judgment against Defendant through a wage garnishment.

The Sheriff’s Department is currently holding no funds. Defendant has filed a claim of exemption in which she asserts her monthly expenses meet or exceed her net monthly income of \$2,128.50 such that she has no excess funds to be paid to Plaintiff. Plaintiff opposes the claim for exemption.

Pursuant to Code of Civil Procedure section 706.050(a)(1), Plaintiff is only entitled to garnish 25% of Defendant’s disposable earnings. In other words, 75% of the income is automatically exempt from garnishment. Disposable earning is the amount remaining after deductions for social security, income taxes and disability insurance. Thus, the most that could be garnished from Defendant’s earnings would be \$532.12. However, there is also an exemption for the amounts necessary to support Defendant and his family.

In addition to the automatic exemption for nonsupport withholding orders, that portion of an employee’s earnings *necessary for the support of the judgment debtor or his or her family* (including a spouse or former spouse) is exempt from *nonsupport* earnings withholding orders (Code Civ. Proc., § 706.051(a),(b).) Thus, under appropriate circumstances, an employee may be able to exempt *all* of his or her earnings from a nonsupport withholding order. (Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2017) ¶ 6:1178.)

Defendant’s financial statement states that she has \$1,743.00 in monthly expenses for her and her two dependent children. That number does not include rent, for which she states “my rent is variable because my mother owns the property and pays mortgage – I pay her what I can.” That total further does not appear to include \$251 per month for her monthly car payment, however it does include payments of \$414 per month for a loan from “Cash Net”. She further attaches a statement saying that her insurance rates will increase as of January 1, 2018 from \$53.30 to \$67 per month. She also describes additional expenses that appear to be one-time, rather than monthly expenses such as \$180 for car registration and a \$61.10 payment for her health insurance.

In opposition, Defendant states that “payments to an orthodontist and ‘Cash Net’ should not take priorities over necessities of life.”

“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.” (Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2017) ¶ 6:1179.)

The \$414 payment on the loan does not take precedence over payment of this judgment, although orthodontist payments will be deemed necessary. Thus, it appears that without the inclusion of rent, or the \$414 loan, but adding the \$251 car payment and \$20 for a monthly proration of the insurance fee and car payment, Defendant has \$1600 in monthly expenses, leaving \$528.50, just under 25% of her disposable earnings.

Defendant shall come prepared to address how much on average she has paid her mother for rent over the last year, in order to determine how much of the amount of \$528.50 should be exempt as necessary for the support of her and her family.