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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In Re:)
ANC Rental Corporation, et al.)
_____)
Alamo Rent A Car LLC, National Car)
Rental Systems, Inc., and ANC Rental)
Corporation,)
Judgment Creditors,)
vs.)
A Plus Auto Body & Paint Inc.,)
Judgment Debtor.)
_____)
Wells Fargo Bank, N.A.,)
Garnishee.)
_____)

No. MC08-110-PHX-ROS
REPORT AND RECOMMENDATION

TO THE HONORABLE ROSLYN O. SILVER, UNITED STATES DISTRICT JUDGE:
This matter arises on Judgment Creditors’ Application for Judgment on Garnishment, filed on June 16, 2009. (Doc. #9.) Judgment Creditors seeks entry of Judgment against Garnishee Wells Fargo Bank, N.A. (“Garnishee”), for nonexempt monies in the amount of \$15,223.83 purportedly belonging to Judgment Debtor A Plus Auto Body & Paint Inc. United States District Judge Roslyn O. Silver referred this case to the undersigned for the garnishment proceedings. (Doc. #11.)

1 A review of the record demonstrates that on December 14, 2004, the United States
2 Bankruptcy Court for the District of Delaware entered default judgment against Judgment
3 Debtor in favor Judgment Creditors for the amount of \$22,758.50. (Doc. #1.)

4 On April 2, 2009, Judgment Creditors filed an Application for Writ of Garnishment
5 (Non-Earnings) against the Garnishee alleging in pertinent part that:

- 6 a. [The Garnishee] is indebted to the Judgment Debtor for monies which
7 are not earnings;
- 8 b. [T]he Garnishee is holding nonexempt monies on behalf of the
9 Judgment Debtor;
- 10 c. [T]he Garnishee has in its possession non-exempt personal property
11 belonging to the Judgment Debtor[.]

12 (Doc. #5.) On April 9, 2009, a Writ of Garnishment and Summons (Non-Earnings) was
13 issued to the Garnishee requesting, *inter alia*, that the Garnishee file an answer to the Writ
14 as to:

- 15 1. Whether the garnishee was indebted to or otherwise in possession of
16 monies of the Judgment Debtor at the time the writ was served.
- 17 2. The total amount of indebtedness or monies in possession of the
18 garnishee at the time the writ was served.
- 19 3. The amount of indebtedness or monies withheld by the garnishee
20 pursuant to the writ.
- 21 4. The amount of indebtedness or monies not withheld by the garnishee,
22 and the reason for not withholding.
- 23 5. Whether the garnishee was in possession of personal property of the
24 Judgment Debtor at the time the writ was served.

25 * * *

26 (Doc. #6.) Additionally, the Writ required the Garnishee to deliver to Judgment Debtor a
27 copy of the Writ and Notice. (Doc. #6.)

28 Thereafter, on April 22, 2009, the Garnishee filed an Answer to Writ of Garnishment
(Non-Earnings) indicating that, at the time of service of the Writ, “[a] total balance of
\$15,223.83 is the amount of indebtedness or money withheld by the Garnishee pursuant to
the writ” (Doc. #7.) The Garnishee also stated that it delivered copies of the “Writ and
Summons, Notice to Judgment Debtor, Underlying Judgment and Request for Hearing” to

1 Judgment Debtor on April 15, 2009 – by regular first class mail. (Doc. #7.) Further, the
2 Garnishee mailed its Answer to both Judgment Debtor and Judgment Creditors on April 20,
3 2009. (Doc. #7.)

4 On June 16, 2009, no objection to the Writ of Garnishment or Answer having been
5 filed, Judgment Creditors filed the subject Application for Judgment on Garnishment. (Doc.
6 #9.) On July 17, 2009, Judgment Creditors and Judgment Debtor filed a Stipulation for Entry
7 of Judgment on Garnishment and to Release Funds Held by Wells Fargo Bank, NA to ANC
8 Rental Corporation. (Doc. #12.) In the Stipulation, the parties stated that they “resolved
9 their differences and entered into a settlement agreement. That settlement agreement
10 provides for the entry of a judgment on garnishment in this action and for the release of the
11 funds being held by Wells Fargo Bank, NA to Judgment Creditor.” (Doc. #12.) The
12 proposed Stipulated Judgment on Garnishment attached to the Stipulation states the
13 following:

- 14 1. Wells Fargo Bank, NA (the “Garnishee”) held funds belonging to A-
15 Plus Auto Body & Paint, Inc. (the “Judgment Debtor”) in the amount of
\$15,223.83 at the time of service of the Writ.
- 16 2. At the time of service of the Writ the Judgment Debtor was indebted to
17 Judgment Creditor.
- 18 3. The court approves the stipulation entered by and between the
19 Judgment Creditor and the Judgment Debtor.

20 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
21 DECREED that:

22 The Judgment Creditor shall have Judgment against the Garnishee for
23 \$15,119.00, consisting of the following amounts:

24 Principal	\$15,000.00
25 Filing/Registration Fee	\$39.00
26 Service Fee of Wells Fargo Bank	\$55.00
27 Statutory Bank Search Fee	\$25.00

28 IT IS FURTHER ADJUDGED AND DECREED that Garnishee is
entitled to an answer fee of \$100.00 which is to be paid from the Judgment
Debtor’s account.

IT IS FURTHER ADJUDGED AND DECREED that \$15,119.00
retained by the Garnishee pursuant to the Writ of Garnishment and this
Judgment are to be immediately paid to the Trust Account of Schneider &
Onofry, P.C. for the benefit of the Judgment Creditor.

1 (Doc. #13-2.)

2 In accordance with the foregoing,

3 **IT IS HEREBY RECOMMENDED** that pursuant to the parties Stipulation for Entry
4 of Judgment on Garnishment and to Release Funds Held by Wells Fargo Bank, NA to ANC
5 Rental Corporation (Doc. #12), Judgment Creditors' Application for Judgment on
6 Garnishment (Doc. #9) be **DENIED** as moot;

7 **IT IS FURTHER RECOMMENDED** that the Court approve the Stipulation and
8 proposed Stipulated Judgment entered by and between the Judgment Creditor and the
9 Judgment Debtor, which sets forth the following terms:

10 The Judgment Creditor shall have Judgment against the Garnishee for \$15,119.00,
11 consisting of the following amounts:

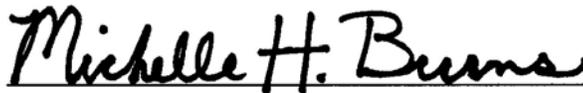
12	Principal	\$15,000.00
	Filing/Registration Fee	\$39.00
13	Service Fee of Wells Fargo Bank	\$55.00
	Statutory Bank Search Fee	\$25.00

14 The Garnishee is entitled to an answer fee of \$100.00 which is to be paid from the
15 Judgment Debtor's account, and \$15,119.00 retained by the Garnishee are to be immediately
16 paid to the Trust Account of Schneider & Onofry, P.C. for the benefit of the Judgment
17 Creditor.

18 This recommendation is not an order that is immediately appealable to the Ninth
19 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of
20 Appellate Procedure, should not be filed until entry of the District Court's judgment. The
21 parties shall have ten days from the date of service of a copy of this recommendation within
22 which to file specific written objections with the Court. See 28 U.S.C. § 636(b)(1);
23 Fed.R.Civ.P. 6(a), 6(b) and 72. Thereafter, the parties have ten days within which to file a
24 response to the objections. Failure to timely file objections to the Magistrate Judge's Report
25 and Recommendation may result in the acceptance of the Report and Recommendation by
26 the district court without further review. See United States v. Reyna-Tapia, 328 F.3d 1114,
27 1121 (9th Cir. 2003). Failure to timely file objections to any factual determinations of the
28

1 Magistrate Judge will be considered a waiver of a party's right to appellate review of the
2 findings of fact in an order of judgment entered pursuant to the Magistrate Judge's
3 recommendation. See Fed.R.Civ.P. 72.

4 DATED this 17th day of August, 2009.

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6 _____
Michelle H. Burns
7 United States Magistrate Judge

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