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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THREE LAKES DESIGN,

Plaintiff-Judgment
Creditor,

v.

GINA SAVALA,

Defendant-Judgment
Debtor.

No. 2:17-cv-01757-MCE-CKD (PS)
ORDER
(ECF No. 58)

Before the court is a renewed motion by plaintiff-judgment creditor Three Lakes Design for an earnings withholding order against the spouse of defendant-judgment debtor Gina Savala.¹ (ECF No. 58.) The motion is brought as part of Three Lakes’ ongoing effort to collect the judgment entered against Ms. Savala in this copyright infringement case. A hearing on the motion was held remotely on September 1, 2021, at which plaintiff’s counsel Mark Serlin appeared for Three Lakes. (ECF No. 60.) Defendant Savala did not appear, despite several efforts to notify her of the proceeding. (Id.; ECF No. 59; Docket text entries dated 8/20/2021 and 8/25/2021.) For the following reasons, the court GRANTS the motion.

¹ Because defendant is self-represented and the motion is related to collection of judgment, the matter is referred to the undersigned pursuant to Local Rules 302(c)(11) & (21) and 28 U.S.C. § 636(b)(1).

1 **BACKGROUND**

2 In August 2019, the court granted default judgment for Three Lakes, awarding it \$115,000
3 in statutory damages, plus post-judgment interest, for Ms. Savala's infringement of 23
4 photographs copyrighted to Three Lakes. (ECF Nos. 31 (findings and recommendations), 35
5 (order adopting findings and recommendations), 36 (judgment), 47 (amended judgment²)). The
6 court found that Three Lakes³ adequately alleged that Ms. Savala used its copyrighted images on
7 her social media platforms and websites without permission. (ECF No. 31 at 5.) Specifically, the
8 amended complaint alleged that between April and July 2017 Ms. Savala reposted Three Lakes'
9 images for profit for her own business, Candy Couture Shop. (ECF No. 19 at 3-28.) Judgement
10 was entered against "Defendant Gina Savala, individually, and her marital community, dba Candy
11 Couture Shop." (ECF Nos. 46, 47, hereinafter "Copyright Judgment.")

12 A writ of execution to enforce the judgment was issued on August 30, 2019 (ECF No. 43),
13 and on September 10, 2019, Three Lakes first moved for an earnings withholding order against
14 Ms. Savala's husband, Gilbert Anthony Savala III (ECF No. 44). For most of the litigation of this
15 case, the court was unable to successfully deliver mail to Ms. Savala's address of record.
16 However, both Ms. and Mr. Savala appeared in person at the hearing on the earnings withholding
17 motion on October 9, 2019 before the undersigned. (ECF No. 45.) At the hearing, Ms. Savala
18 informed the court and opposing counsel that she and her husband were about to file for
19 bankruptcy and stated that they had only learned of the hearing through their bankruptcy attorney.
20 The undersigned accordingly continued the hearing so that Three Lakes' counsel could confer
21 with the Savalas' bankruptcy counsel. (Id.)

22 On November 8, 2019, Three Lakes notified the court that the action was automatically
23 stayed due to the Savalas filing for Chapter 7 bankruptcy on October 17, 2019. (ECF No. 48,
24 Notice of Stay; In re: Gina Luisa Savala and Gilbert Anthony Savala, III, No. 19-26462 (U.S.

25 ² After Three Lakes moved for attorneys' fees, the judgment was amended to reflect that Ms.
26 Savala owed \$115,000 in statutory damages, post-judgment interest, plus \$27,496.00 in attorneys'
27 fees and \$561.80 in costs. (ECF Nos. 46, 47.)

28 ³ Three Lakes was founded in April 2016 for the purpose of designing and selling jewelry and
supporting autism research. (ECF No. 19 ¶¶ 7, 9.)

1 Bankr. E.D. Cal.) An independent review of the bankruptcy proceedings indicates that in
2 December 2020, the Savalas received a discharge of their debts; however, in an underlying
3 adversary proceeding in the bankruptcy court the Savalas and Three Lakes stipulated that only
4 \$11,000 of the Copyright Judgment would be deemed non-dischargeable. Three Lakes Design v.
5 Savala, No. 19-26462, Adv. Pro. No. 20-2005 (U.S. Bankr. E.D. Cal.), ECF No. 83 at 2. Under
6 the stipulation—which the bankruptcy court approved (ECF No. 58.3 at 3-4)—the Savalas were
7 to repay the \$11,000 debt via consecutive monthly payments of \$500. (Adv. Pro. No. 20-2005,
8 ECF No. 83 at 2.)

9 Repayment broke down somewhere along the way because on March 1, 2021, in this court
10 Three Lakes sought and obtained an updated writ of execution reflecting that \$10,056.59
11 remained due on the Copyright Judgment. (ECF No. 52.) Several months later, on July 23, 2021,
12 Three Lakes renewed its motion for an earnings withholding order against Mr. Savala. (ECF
13 No. 58.)

14 As with the earlier motion, Three Lakes’ motion is brought under California Code of Civil
15 Procedure § 706.109 as incorporated in Federal Rule of Civil Procedure 69. The accompanying
16 declaration by Three Lakes’ counsel Mark Serlin avers that Ms. Savala has made only “partial
17 payment” on the non-discharged portion of the Copyright Judgment, which remains unsatisfied.
18 (ECF No. 58.3 ¶ 4.) At the hearing, counsel indicated that Three Lakes is seeking to collect
19 \$11,000 to \$13,000, after factoring in costs and fees incurred in the collection efforts. Counsel
20 further avers in the declaration that Mr. Savala has been married to defendant-judgment debtor
21 Ms. Savala for “over ten years” based on Ms. Savala’s admissions in sworn bankruptcy
22 schedules, her testimony in a bankruptcy deposition, and a recent telephone conversation with
23 Mr. Savala. (Id. ¶ 3.)

24 **DISCUSSION**

25 **A. Wage Withholding Law & Procedure**

26 Under Federal Rule of Civil Procedure 69, a money judgment is enforced by a writ of
27 execution, and the procedure on execution and in supplementary proceedings in aid of execution
28 “must accord with the procedure of the state in which the court is located,” except to the extent a

1 federal statute applies. Fed. R. Civ. P. 69(a)(1).

2 California law provides that a judgment creditor may satisfy a money judgment against
3 the judgment debtor and/or the community property interest of the spouse as well as obligations
4 owed to the other spouse that are community property. Cal. Code Civ. Proc. §§ 695.020(a)-(b),
5 699.710, 700.140.

6 California’s Wage Garnishment Law “provides the exclusive judicial procedure by which
7 a judgment creditor can execute against the wages of a judgment debtor[.]” Cal. State
8 Emps.’ Ass’n v. California, 198 Cal. App. 3d 374, 377 (1988); Cal. Civ. Proc. Code §§ 706.010–
9 706.154. The Wage Garnishment Law sets out detailed steps for requesting a withholding order,
10 notifying the employer and the judgment debtor, and asserting and resolving claims for
11 exemptions.

12 Where a judgment creditor seeks to withhold the judgment debtor’s own wages, a court
13 order is not required to start the process. The judgment creditor simply applies ex parte directly
14 to the “levying officer”—that is, the sheriff or marshal in the county where the judgment debtor’s
15 employer is to be served—for an earnings withholding order. Cal. Civ. Proc. Code § 706.102(a);
16 see id. § 701.121 (specifying required contents of application); Judicial Council form WG-001
17 (Application for Earnings Withholding Order). The levying officer then issues the order, serves it
18 on the employer, and serves notice on the judgment debtor. See Cal. Civ. Proc. Code
19 §§ 706.102(a), 706.122 (contents of notice to employee/judgment debtor), 706.125 (contents of
20 order).

21 However, “[a]n earnings withholding order may not issue against earnings of the
22 judgment debtor’s spouse unless a court order is obtained upon noticed motion.” Cal. Code Civ.
23 Proc. § 706.109 (emphasis added). Thus, the order Three Lakes seeks by this motion is an
24 intermediary order that it will then present, along with its application for an earnings withholding
25 order, to the appropriate levying officer who will then issue the withholding order itself. See
26 Choice Hotels Int’l, Inc. v. Penta Denver, LLC, 2015 WL 3830691, at *3 (N.D. Cal. June 19,
27 2015) (“[T]he Wage Garnishment Law . . . requires a court order before a judgment creditor may
28 apply for the withholding order itself with the appropriate levying officer.”).

1 Except for requiring court authorization to seek an earnings withholding order, it appears
2 that the remainder of the Wage Garnishment Law procedures apply with equal force to
3 withholding wages of a judgment debtor's spouse. Thus, the application for the earnings
4 withholding order and the withholding order itself will account for the automatic statutory
5 withholdings cap that at least 75% of an employee's disposable earnings are exempt from
6 earnings withholding orders. See Cal. Code Civ. Proc. §§ 706.050 (setting maximums), 706.011
7 ("Disposable earnings" means the portion of an individual's earnings that remains after deducting
8 all amounts required to be withheld by law."); see also 15 U.S.C. § 1673 (federal restriction on
9 garnishment). And upon notice of the issuance of the forthcoming earnings withholding order,
10 the spouse may claim a further exemption for "the portion of the . . . earnings that the judgment
11 debtor [or, in this scenario, the spouse] proves is necessary for the support of the [spouse's]
12 family supported in whole or in part by the [spouse.]" Cal. Code Civ. Proc. § 706.051(b). To
13 claim this exemption for "necessaries," the judgment debtor/employee spouse must file with the
14 levying officer "an original and one copy of (1) the judgment debtor's claim of exemption and
15 (2) the judgment debtor's financial statement." Cal. Civ. Proc. Code § 706.105(b). These
16 procedures will also be explained in the notice the levying officer will provide to the employee.
17 See id. § 706.122.

18 The filing of any claim of exemption then triggers a series of deadlines for the judgment
19 creditor to oppose the exemption claim and to request a court hearing, if desired. Id.
20 §§ 706.105(c)(3), (d), (e). If the judgment creditor does not timely oppose, the levying officer
21 will inform the employer that the earnings withholding order is either terminated or modified,
22 depending on the degree of exemption claimed. Id. § 706.105(f).

23 At the current preliminary stage in the wage garnishment procedure, the court understands
24 its role as ensuring that the alleged spouse is truly the judgment debtor's spouse and that the
25 earnings are community property that can be used to pay the judgment debtor's debt. See, e.g.,
26 Campbell v. Simmonds, 2005 WL 896293, at *1-2 (Cal. Ct. App. Apr. 19, 2005) (affirming trial
27 court's order allowing wage garnishment against judgment debtor's spouse after finding that they
28 were married before tort occurred).

1 **B. Community Property**

2 Under California law, subject to certain exceptions not relevant to this case, “all property,
3 real or personal, wherever situated, acquired by a married person during the marriage while
4 domiciled in this state is community property.” Cal. Fam. Code § 760. “Community property is
5 subject to enforcement of a money judgment as provided in the Family Code.” Cal. Civ. Proc.
6 Code § 695.020(a).

7 Section 910(a) of the Family Code provides: “Except as otherwise expressly provided by
8 statute, the community estate is liable for a debt incurred by either spouse before or during
9 marriage, regardless of which spouse has the management and control of the property and
10 regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.”
11 Cal. Fam. Code § 910(a). Section 911(a) provides in relevant part: “The earnings of a married
12 person during marriage are not liable for a debt incurred by the person’s spouse before marriage.”
13 Cal. Fam. Code § 911(a). And Section 903(b) provides that a debt is “incurred” in the case of a
14 tort “at the time the tort occurs.” Cal. Fam. Code § 903(b).

15 “Under the above statutes, whether [Mr. Savala’s] wages could be subject to garnishment
16 for [Ms. Savala]’s debt depend[s] on whether [s]he incurred the debt before their marriage.”
17 Campbell, 2005 WL 896293, at *2. Ms. Savala’s infringing acts occurred between April and July
18 2017, and according to plaintiff’s counsel’s declaration, the Savalas have been married since at
19 least 2011. Given Ms. Savala’s failure to appear or otherwise respond to this motion, the court
20 declines to require further substantiation of the duration of the Savalas’ marriage. Thus, the court
21 finds that Ms. Savala’s debt was incurred while married to Mr. Savala. See Petrella v. Metro-
22 Goldwyn-Mayer, Inc., 572 U.S. 663, 671 (2014) (“Each time an infringing work is reproduced or
23 distributed, the infringer commits a new wrong. Each wrong gives rise to a discrete claim that
24 accrues at the time the wrong occurs.” (alterations omitted)). And Mr. Savala’s wages, as
25 community property, can be garnished in satisfaction of that judgment.

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Accordingly, IT IS ORDERED THAT:

1. Plaintiff's motion for an earnings withholding order against the spouse of the judgment debtor (ECF No. 58) is GRANTED; and
2. Pursuant to Federal Rule of Civil Procedure 69 and California Code of Civil Procedure §§ 695.020 and 706.109, an earnings withholding order shall be issued against the earnings of Gilbert Anthony Savala III, the spouse of judgment debtor Gina Savala.

Dated: September 1, 2021



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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