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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AYLA ERLER,
Plaintiff,

v.

YASHAR ERLER,
Defendant.

Case No. [12-cv-02793-CRB](#)

**ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT AND
REFERRING CASE TO
MAGISTRATE JUDGE**

Plaintiff Ayla Erler brought suit against her ex-husband, Defendant Yashar Erler, for failing to maintain his obligation to support Ayla at 125% of the Federal Poverty Guidelines under the I-864 form, Affidavit of Support. In 2013, the Court filed an order “denying plaintiff’s motion for summary judgment and giving parties notice regarding possible summary judgment for defendant.” Erlar v. Erlar, No. CV-12-2793-CRB, 2013 WL 6139721, at *1 (N.D. Cal. Nov. 21, 2013). The Court found that though Yashar’s¹ obligation continued irrespective of their divorce proceedings, Ayla, who lived with her adult son, earned above 125% of the Federal Poverty Guidelines. In 2016, the Ninth Circuit vacated the Court’s grant of summary judgment to Yashar. The Ninth Circuit remanded the case with instructions to determine Yashar’s obligation to Ayla based on a one-person household, disregarding Ayla’s adult son’s income.

As explained below, the Court DENIES Yashar’s motion for summary judgment and GRANTS IN PART and DENIES IN PART Ayla’s motion for summary judgment.

¹ For purposes of clarity and in keeping with the Ninth Circuit’s treatment of the parties in its order, the Court uses the parties’ first names.

1 The Court holds that Ayla’s food stamps from California and her pension from the Turkish
2 Government are income, which reduces the sum that Yashar owes to Ayla. The Court
3 ORDERS the parties to return to Magistrate Judge Cousins to determine the exact
4 monetary damages consistent with this Order.

5 **I. BACKGROUND**

6 **A. Facts**

7 Ayla emigrated from Turkey in November 2008 to marry Yashar, an American
8 citizen. Erler v. Erler, 824 F.3d 1173, 1175 (9th Cir. 2016). The parties signed a
9 premarital agreement, which stated that “neither party shall seek or obtain any form of
10 alimony or support from the other.” Id. Ayla and Yashar married on April 15, 2009. Id.
11 On April 29, 2009, as a part of Ayla’s naturalization process, Yashar signed the I-864
12 form, Affidavit of Support (“Affidavit”). Id. The Affidavit included a commitment to
13 support Ayla at 125% of the Federal Poverty Guidelines. Id.

14 On March 25, 2011, Ayla and Yashar separated. Id. After the separation, in April
15 2011, Ayla moved in with her adult son, Dogukan Solmaz, a California resident. Id.
16 Yashar paid \$3,500 to Ayla to assist with moving expenses. Id. at 1176. Yashar and Ayla
17 appeared in the Family Law Division of Superior Court of California, County of San
18 Mateo on March 22, 2012, and finalized their divorce on May 4, 2012. Yashar Decl. Ex.
19 D (dkt. 70-5). The court ordered Ayla to reimburse Yashar \$10,242.00 for possession of
20 his property. Id. Yashar claims in his motion that he has yet to collect this payment but
21 does not provide support for his claim. See Yashar Mot. (dkt. 70) at 3. Ayla has not
22 worked since the separation. Ayla 2017 Decl. (dkt. 71-1) ¶ 2.

23 From May 2011 to October 2012, Ayla received approximately \$200 per month in
24 food stamps from the State of California. Id. ¶ 6. In February 2013, the State of California
25 resumed dispersing food stamps to Ayla. Id.

26 Ayla also has a pension from the Turkish government for her prior service in its
27 telecommunications department. Id. ¶ 4. Ayla claims that she can only access the funds in
28 Turkey and must use a Turkish debit card to do so. Id. She does not receive any of the

1 pension funds for use in the United States. Id. In her prior declaration, in 2013, Ayla
2 conceded that her adult “daughter in Turkey accesses the pension funds and uses them to
3 pay for her own living expenses in Turkey.” Ayla 2013 Decl. (dkt. 7) ¶ 17. Ayla’s
4 account records show consistent money withdrawals from 2011 to 2016. See Yashar Decl.
5 Ex. I (dkt. 70-10).

6 **B. Procedural History**

7 On May 31, 2012, Ayla filed this action, asserting that Yashar has failed to meet his
8 obligation to maintain Ayla at 125% of the Federal Poverty Guidelines since their
9 separation in March 2011. Erlor, 824 F.3d at 1176. Filing for summary judgment, Ayla
10 sought declaratory relief, monetary damages, and legal fees. Id. In response, Yashar filed
11 an opposition and cross-motion for summary judgment, contending that the divorce ended
12 his obligation. Yashar 2013 Mot. (dkt. 12); Erlor, 824 F.3d at 1176. He also argued that
13 even if the Affidavit remained valid after their divorce, Ayla had earned at least 125% of
14 the Federal Poverty Guidelines. Id.

15 On November 21, 2013, the Court “den[ie]d plaintiff’s motion for summary
16 judgment and [gave] parties notice regarding possible summary judgment for defendant.”
17 Erlor, 2013 WL 6139721, at *1. The Court held that Yashar’s obligation extends after the
18 divorce and continues until one of the five circumstances outlined in the Affidavit occurs.
19 Erlor, 824 F.3d at 1176. The Court also held that even though Yashar has a continuing
20 obligation, he did not breach the Affidavit, because the financial support Ayla received
21 from her son kept her above 125% of the Federal Poverty Guidelines. Id. Ayla appealed
22 to the Ninth Circuit. Id.

23 On June 8, 2016, the Ninth Circuit affirmed the Court’s holding that Yashar’s
24 obligation continued after the divorce, but vacated the Court’s grant of summary judgment
25 for Yashar. Id. at 1180. The Ninth Circuit held that Ayla’s adult son’s income is
26 irrelevant when calculating Yashar’s financial obligation. Id. at 1179–80. The Ninth
27 Circuit remanded the case with instructions to determine Yashar’s annual financial
28 obligation to Ayla based on a one-person household. Id. at 1180. Because the Ninth

1 Circuit did not offer any guidance as to what qualifies as “income” under 8 U.S.C. §
2 1183a, the Court must now determine, largely as a matter of first impression, which
3 sources of financial support, if any, qualify as income that would mitigate or discharge
4 Yashar’s liability. See id. (“Rather than address these questions for the first time on
5 appeal, we leave them for the district court to address on remand.”).

6 Upon remand, both parties attended a settlement conference with Magistrate Judge
7 Nathanael Cousins. Settlement Conference (dkt. 67). After the parties could not settle,
8 they filed cross-motions for summary judgment and opposition briefs. Yashar Mot.; Ayla
9 Mot. (dkt. 71); Yashar Opp’n (dkt. 72); Ayla Opp’n (dkt. 73). Ayla claims that she does
10 not have any income as defined by 8 U.S.C. § 1183a, and thus, Yashar owes her 125% of
11 the Federal Poverty Guidelines minus his one-time payment of \$3,500 for her moving
12 expenses. Ayla 2017 Decl. ¶ 2; see Ayla Mot. at 4–5. She seeks declaratory relief and
13 damages in the amount of \$79,493.60, plus attorneys’ fees. Id. Yashar argues that even
14 without her son’s financial support, Ayla has earned above 125% of the Federal Poverty
15 Guidelines for a one-person household. Yashar Mot. at 2–3. In his opposition, Yashar
16 additionally claims that Ayla has not complied with his discovery requests. See Yashar
17 Opp’n at 2–9.

18 The Court must decide whether Ayla earned any money that qualified as income
19 according to 8 U.S.C. § 1183a. See Erler, 824 F.3d at 1179–80. If Ayla earned income,
20 then the Court must determine how much that income reduces Yashar’s financial
21 obligation to Ayla from March 2011 through the end of 2016.

22 **II. LEGAL STANDARD**

23 Summary judgment is proper when “the movant shows that there is no genuine
24 dispute as to any material fact and the movant is entitled to a judgment as a matter of law.”
25 Fed. R. Civ. P. 56(a). An issue is “genuine” only if there is a sufficient evidentiary basis
26 on which a reasonable fact finder could find for the nonmoving party, and a dispute is
27 “material” only if it could affect the outcome under governing law. See Anderson v.
28 Liberty Lobby, Inc., 477 U.S. 242, 248–49 (1986). A principal purpose of the summary

1 judgment procedure “is to isolate and dispose of factually unsupported claims.” Celotex
2 Corp. v. Catrett, 477 U.S. 317, 323–24 (1986). “Where the records taken as a whole could
3 not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue
4 for trial.’” Matsushita Elec. Ind. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986).

5 **III. DISCUSSION**

6 Under 8 U.S.C. § 1183a, immigrants who are deemed likely to become public
7 charges may gain admission to the United States if a sponsor signs United States
8 Citizenship Immigration Services Form I-864 (the Affidavit), thereby promising to
9 maintain the sponsored immigrant at no less than 125% of the Federal Poverty Guidelines
10 for the immigrant’s household size. See 8 U.S.C. § 1183a(a)(1)(A); Aff. (dkt. 70-3) at 6.
11 “The requirement under § 1183 a [sic] that a sponsor promise to maintain the immigrant is
12 intended not only to protect the immigrant from poverty, but to protect the government
13 from a public burden.” Carlborg v. Tompkins, 10-CV-187-BBC, 2010 WL 4553558, at *4
14 (W.D. Wis. Nov. 3, 2010).

15 The Affidavit “create[s] a contract between [the sponsor] and the U.S.
16 Government,” which can be enforced by the sponsored immigrant. Aff. at 6. The
17 sponsor’s obligation ends only in the event that the immigrant does one of the following:

- 18 (1) becomes a citizen of the United States;
- 19 (2) has worked or can be credited with 40 qualifying quarters of work under title II
20 of the Social Security Act;
- 21 (3) ceases to be a lawful permanent resident and departs the United States;
- 22 (4) obtains in a removal proceeding a grant of adjustment of status as relief from
23 removal; or
- 24 (5) dies.

25 Aff. at 7; see also 8 U.S.C. §§ 1183a(a)(2)–(3). If the sponsor dies, his estate will not be
26 responsible for the immigrant. Id. The form specifically states, “Note that divorce does
27 not terminate your obligations under this Form I-864.” Id. (emphasis added).

28 The Court will first address the discovery requests included in Yashar’s opposition.

1 Yashar Opp’n at 2–9. The Court will then address the Ninth Circuit’s discussion about
2 Yashar’s obligation to Ayla and the Affidavit’s underlying policies. Finally, the Court will
3 address the four sources of Ayla’s income that Yashar asserts offsets his obligation: (1) the
4 divorce judgment against Ayla; (2) the rent that Ayla’s adult son pays for her to live with
5 him; (3) the food stamps that the State of California provides to Ayla; and (4) Ayla’s
6 Turkish pension. Yashar Mot. at 2–3.

7 **A. Further Discovery is Unnecessary**

8 In his opposition to Ayla’s motion for summary judgment, Yashar claims that Ayla
9 has failed to comply with his requests for discovery. See Yashar Opp’n at 2–9. Yashar
10 never mentioned any discovery disputes in his original motion for summary judgment and
11 did not include in his declaration any descriptions of efforts to meet and confer. See
12 Yashar Mot.; Yashar Decl; Yashar Opp’n.

13 Under Federal Rule of Civil Procedure 56(d), Yashar must make clear “what
14 information is sought and how it would preclude summary judgment.” Margolis v. Ryan,
15 140 F.3d 850, 853 (1998). Yashar failed to provide an affidavit supplementing his
16 opposition explaining why he “cannot present facts to justify [his] opposition” without
17 particular records. See Fed. R. Civ. P. 56(d). Because Yashar lacks support for his claim
18 that Ayla has not complied with discovery, no further discovery is necessary.

19 In addition to Ayla’s financial records, Yashar continues to request Ayla’s son’s
20 financial records, despite the Ninth Circuit’s holding that the son’s financial support is
21 irrelevant. See Yashar Opp’n at 6; see Erler, 824 F.3d at 1180. Accordingly, the Court
22 will not order further discovery.

23 **B. Obligations Under the Affidavit**

24 The Ninth Circuit affirmed the Court’s ruling that Yashar has a continuing
25 obligation to support Ayla, irrespective of their divorce. Erler, 824 F.3d at 1176. Upon
26 signing the Affidavit, Yashar entered into a contract with the “United States Government
27 for the benefit of the sponsored immigrant, and of any Federal, State, or local
28 governmental agency or private entity that administers any ‘means-tested public benefits

1 program.” Id. at 1175; 8 C.F.R. § 213a.2(d); see also 8 U.S.C. § 1183a(a)(1).

2 The Ninth Circuit held that Yashar must sustain Ayla at 125% of the Federal
3 Poverty Guidelines of a one-person household and that Ayla’s son’s financial support does
4 not mitigate Yashar’s responsibility. See Erler, 824 F.3d at 1178–80. The Ninth Circuit
5 rejected the Court’s calculation based on a two-person household, reasoning that, by the
6 law of contracts, Yashar only reasonably expected to support one person, Ayla, at the time
7 that he signed the Affidavit. Id. at 1178 (citing 11 Williston on Contracts § 31:11 (4th ed.
8 2012)). Because Ayla’s adult son was not included in the Affidavit as a sponsored
9 immigrant, his income and gifts to Ayla are irrelevant to calculating her income. Erler,
10 824 F.3d at 1178–80. The Ninth Circuit explained that if it were to consider Ayla’s son’s
11 income, then Yashar would be obligated to support a person not included in the Affidavit
12 during any year when Ayla and her son earn a combined income below 125% of the
13 Federal Poverty Guidelines for a two-person household. Id.

14 The Ninth Circuit discussed three general guidelines in interpreting the policies
15 embedded in 8 U.S.C. § 1183a. See id. First, the Ninth Circuit emphasized that the
16 sponsor should only be obligated to finance what he reasonably expected when signing the
17 Affidavit. Id. at 1178. Second, the purpose of the Affidavit is not only to protect the
18 immigrant from poverty but to “prevent the admission to the Unites States of any alien
19 who ‘is likely at any time to become a public charge.’” Id. at 1179 (citing Liu v. Mund,
20 686 F.3d 418, 422 (7th Cir. 2012) (quoting 8 U.S.C. § 1182(a)(4)(A))). Third, if a court’s
21 decision must provide one side a windfall, the court should favor the immigrant over the
22 sponsor. Erler, 824 F.3d at 1179 (“Because the sponsor is not an intended beneficiary of
23 the affidavit-of-support requirement . . . we see no reason why the sponsor, rather than the
24 immigrant should receive the windfall.”); see also Liu, 686 F.3d at 422.

25 8 U.S.C. § 1183a does not define income as it applies to a sponsored immigrant or
26 discuss particular categories of income. The statute only has one portion that discusses
27 income and it is in the context of defining the sponsor:
28

1 For purposes of this section, a reference to an annual income
2 equal to at least a particular percentage of the Federal poverty
3 line means an annual income equal to at least such percentage
4 of the Federal poverty line for a family unit of size equal to the
number of members of the sponsor's household (including
family and non-family dependents) plus the total number of
other dependents and aliens sponsored by the sponsor.

5 8 U.S.C. § 1183a(f)(6)(iii); see also id. § 1183a(f) (“‘sponsor’ defined”); id. §
6 1183a(f)(1)(E) (defining sponsor in part as one who “demonstrates (as provided in
7 paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the
8 Federal poverty line”). The statute does not make any reference to the tax code when
9 describing the sponsored immigrant’s income; the tax code is only relevant to the
10 sponsor’s eligibility to sign the Affidavit. See also 8 C.F.R. § 213a.1(2) (“Income means
11 an individual’s total income (adjusted gross income for those who file IRS Form 1040EZ)
12 for the purposes of the individual’s U.S. Federal tax liability . . . [and o]nly an individual’s
13 Federal tax return . . . shall be filed with an affidavit of support . . .”). Immigrants who
14 have not yet gained admission would not have filed U.S. tax income forms, so it is not
15 logical to assume that this section applies to them. As a result of the lack of a definition of
16 income for the immigrant in 8 U.S.C. § 1183a and 8 C.F.R. § 213a.1(2), courts that have
17 been tasked with determining a sponsored immigrant’s income under 8 U.S.C. § 1183a cite
18 few sources in their reasoning. See, e.g., Shumye v. Felleke, 555 F. Supp. 2d 1020, 1024–
19 27 (N.D. Cal. 2008).

20 When assessing income, the Court analyzes Ayla’s income on an annual basis from
21 the date of separation on March 25, 2011 to the end of 2016. See id. at 1024 (calculating
22 the plaintiff-immigrant’s income annually); Stump v. Stump, No., 1:04-CV-253-TS, 2005
23 WL 1290658, at *11 (N.D. Ind. May 27, 2005); 8 U.S.C. § 1183a(1)(A).

24 **C. Qualifying Income**

25 Yashar points to four alleged sources of income that could offset his obligations
26 under the Affidavit: (1) the \$10,242 divorce judgment against Ayla in 2012; (2) the rent
27 money Ayla does not pay to live with her adult son; (3) food stamps Ayla receives from
28 the State of California; and (4) Ayla’s Turkish pension. Yashar Mot. at 2–3. The Court

1 will address each alleged source of income in turn.

2 **1. The Divorce Settlement**

3 Yashar argues that the \$10,242 divorce judgment that he claims he never collected
4 from Ayla constitutes income for Ayla in 2012. Yashar Mot. at 2–3. While Yashar
5 provided a document evidencing a \$10,242 judgment against Ayla, he failed to provide
6 any evidence that he has not collected the money. Erler Divorce Judgment (dkt. 70-5); see
7 Yashar Decl. Yashar has therefore failed to carry his burden as to this purported income.

8 Moreover, the \$10,242 judgment order for Ayla to pay Yashar relates to the
9 division of the couple’s assets. Divorce Judgment at 4–5. Even if Yashar had provided
10 evidence that he did not collect the \$10,242 judgment, it is not relevant to these
11 proceedings, and, thus, does not qualify as income. See Shumye, 555 F. Supp. 2d at 1025
12 (ruling that a \$49,000 divorce settlement did not constitute income earned by plaintiff
13 because the settlement arose from the former couple’s state community property rights). If
14 Yashar desires to collect his \$10,242 judgment against Ayla, he can take this matter up
15 with San Mateo Family Court.

16 **2. Rent**

17 Yashar next argues that Ayla earns \$983.50 per month, because Ayla has agreed to
18 complete domestic work for her son in exchange for his paying the rent. Yashar Mot. at 2,
19 10–12. Yashar primarily relies upon Toure-Davis v. Davis to argue that a district court has
20 previously classified domestic work performed in exchange for free rent as income. See
21 Yashar Mot. at 11 (citing No. WGC-13-916, 2015 WL 993575, at *7 (D. Md. Mar. 4,
22 2015)) (holding that because government housing subsidies count as income under 8
23 U.S.C. § 1183a, a private housing subsidy in exchange for domestic work qualifies as
24 income when there is an agreement that quantifies the value of the work).

25 Ayla’s housing situation is distinguishable from the contract in Toure-Davis. There
26 is no evidence that any contract exists between Ayla and her son that appraises her
27 domestic work. See Solmaz Decl. (dkt. 73-1) ¶ 3–5. In fact, Ayla’s son signed an
28

1 affidavit declaring that he allows his mother live with him for free as a gift. Id.² Further,
2 in Toure-Davis, the plaintiff moved in with a man with whom she did not share a
3 biological or marital relationship, and they agreed that she would pay rent of \$600 a
4 month. 2015 WL 993575, at *5–6. The plaintiff subsequently agreed to perform cooking
5 and cleaning work in lieu of paying \$600 a month. Id. Unlike Toure-Davis, Ayla’s ability
6 to live with her son is not contingent upon any performance of work. See Solmaz Decl. ¶¶
7 3–5.

8 Ayla never contracted with her son to provide domestic housework in exchange for
9 rent coverage. Id. The rent she is allegedly responsible for covering is not income under 8
10 U.S.C. § 1183a.

11 3. Food Stamps

12 Yashar further asserts that the food stamps Ayla receives from the State of
13 California qualify as income under 8 U.S.C. § 1183a. Yashar Mot. at 2–3, 10–12.

14 Ayla argues that the food stamps are not income, because the Internal Revenue
15 Service (“IRS”) does not classify food stamps as taxable income. Ayla Opp’n. at 3–4.
16 Ayla also relies on language that discusses a sponsor’s income in 8 C.F.R. § 213a.1 to
17 argue that only reportable income on the IRS Form 1040EZ qualifies as income under 8
18 U.S.C. § 1183a for the sponsored immigrant. Id. She further argues that allowing food
19 stamps to qualify as income is contrary to public policy as it allows the sponsor to
20 circumvent his responsibilities and makes the sponsored immigrant a burden on the state.
21 Ayla Mot. at 8 (citing Skorychenko v. Tompkins, No. 08-CV-626-BBC, 2009 WL
22 3837340, at *2 (W.D. Wis. Nov. 3, 2009)); Ayla Opp’n at 4 (citing Carlborg v. Tompkins,
23 No. 10-cv-187-BBC, 2010 WL 4553558, at *4 (W.D. Wis. Nov. 3, 2010)); Stump v.

24
25 ² Yashar assumes that Ayla is responsible for half of the rent because she lives in a two-
26 adult household. While Yashar never explains why he believes that Ayla is responsible for 50%
27 of the rent, he seems to assume that, by default, two adults living under one roof would each be
28 responsible for half of the rent. See Yashar Mot. But it is common knowledge that roommates
often do not equally split rent and often split rent based on idiosyncratic household needs. In fact,
nothing in Toure-Davis suggests that \$600 amounted to 50% of the rent. See No. WGC-13-916,
2015 WL 993575.

1 Stump, No. 04-CV-253-TS, 2005 WL 1290658, at *9 (N.D. Ind. May 27, 2005) (“Given
2 the choice between taxpayers and a sponsor, Congress prefers, indeed requires, that a
3 sponsor support an alien who has not become self-reliant.”).

4 Ayla’s reliance on the IRS’s definition of income overlooks the reason why the IRS
5 does not categorize government subsidies as taxable income. The IRS serves as the federal
6 government’s tax assessor and collector; it does not perform immigration regulatory duties.
7 For the purposes of assessing and collecting taxes, it makes little sense for the government
8 to award a public benefit to an individual and then tax the individual on it. For the
9 purposes of assessing an immigrant’s financial need, however, it does make sense to count
10 food stamps as income. Food stamps contribute to keeping an individual above 125% of
11 the Federal Poverty Guidelines, and the Affidavit’s stated goal is to keep people from
12 being public charges. Aff. at 6. Moreover, the statute seems to recognize this by
13 providing that the State of California can recover the cost of food stamps from the sponsor.
14 Id. at 7; see also 8 U.S.C. § 1183a(a)(1)(B) (“[the Affidavit] is legally enforceable against
15 the sponsor by . . . any State (or any political subdivision of such State)”); see also 8
16 U.S.C. § 1183a(b)(1)(A) (“Upon notification that a sponsored alien has received any
17 means-tested public benefit . . . a State[]or any political subdivision of a State shall request
18 reimbursement by the sponsor in an amount which is equal to the unreimbursed costs of
19 such benefit.”).

20 Ayla’s interpretation of the Affidavit obligations would create policy contrary to the
21 statutory purpose: it incentivizes immigrants to apply for governmental subsidies. See
22 Erler, 824 F.3d at 1179. “The requirement under § 1183a that a sponsor promise to
23 maintain the immigrant is intended not only to protect the immigrant from poverty, but to
24 protect the government from a public burden.” Carlborg, 2010 WL 4553558, at *4. If the
25 Court were to hold that the food stamps do not qualify as income, then Ayla would receive
26 \$2,400 annually from the State of California and be able to collect the same \$2,400 from
27 Yashar. Thus, Ayla could receive a double payment and would be incentivized to apply
28 for government assistance as it allows her to extract a windfall above 125% of the Federal

1 Poverty Guidelines. Contrary to what Ayla implies, Yashar cannot avoid financial liability
2 when an agency provides means-tested public benefits to Ayla—because the Affidavit
3 binds Yashar to Ayla, any government agency, and any third-party providing means-tested
4 public benefits. See Ayla Opp’n at 3–4; see 8 U.S.C. § 1183a(a)(1)(B).³

5 Ayla relies on an opinion from the District Court for the Western District of
6 Wisconsin, in which the court stated in dicta that it was unconvinced that government
7 subsidies are income under 8 U.S.C. § 1183a, because counting them as income is contrary
8 to their purpose and to the policy outlined in the statute. Ayla Mot. 8 (citing Skorychenko,
9 2009 WL 3837340, at *2 (“It would be contrary to defendant’s contractual obligations
10 under the I-864 affidavit to allow him to escape his obligation by subtracting the benefits
11 plaintiff has received from federal, state, or local public assistance services.”)). Absent
12 from that court’s decision is any recognition that the sponsor does not actually get off scot-
13 free when a plaintiff receives means-benefit assistance; he is still bound to any
14 governmental agency or third party that provided means-benefit assistance to the
15 sponsored immigrant. See Skorychenko, No. 08-CV-626-BBC, 2009 WL 3837340.⁴

16 Ayla also cites a quotation from Stump out of context in order to bolster her policy
17 argument. Ayla Opp’n at 4 (citing 2005 WL 1290658, at *9 (“Given the choice between
18 taxpayers and a sponsor, Congress prefers, indeed requires, that a sponsor support an alien
19 who has not become self-reliant.”)). In Stump, the sponsor-defendant argued that in order
20 for the plaintiff to claim damages, she must first show that she was receiving means-tested
21 public benefits in order to prove that she was below 125% of the Federal Poverty
22

23 ³ The Ninth Circuit reasoned that if the only outcomes available result in a windfall for
24 either party, courts should favor the sponsored immigrant. Erler, 824 F.3d at 1179. This paradigm
25 does not apply to food stamps. Only Ayla could earn a windfall since Yashar is ultimately liable
26 for 125% of the Federal Poverty Guidelines; he would simply reimburse the state for the value of
the food stamps instead of directly paying Ayla the value of the food stamps.

27 ⁴ This is not to say that, going forward, Ayla should continue to seek food stamps and then
28 the State of California pursue reimbursement from Yashar—if Yashar is paying the full amount
owed to Ayla, presumably she should not need food stamps.

1 Guidelines. Stump, 2005 WL 1290658, at *4–5. The court in Stump correctly held that
 2 the plaintiff does not need to receive means-benefits assistance to enforce the sponsor’s
 3 obligations. See id. The court made the aforementioned statement to explain why a
 4 sponsored immigrant should not have to first receive means-tested public benefits in order
 5 to sue the sponsor. See id. at *9.

6 The food stamps that Ayla has already received from the State of California qualify
 7 as income for the purposes of determining Yashar’s financial liability to Ayla. Indeed,
 8 courts have held that government subsidies are income under 8 U.S.C. § 1183a. See
 9 Shumye, 555 F. Supp. 2d at 1025; see also Toure-Davis, No. WGC-13-916, 2015 WL
 10 993575, at *5–6 (recognizing that government housing subsidies are income and extending
 11 income under 8 U.S.C. § 1183a to include private housing subsidy agreements); Cheshire
 12 v. Cheshire, No. 3:05-cv-00453-TJC-MCR, 2006 WL 1208010, at *6 n. 12 (M.D. Fla. May
 13 4, 2006) (suggesting that food stamps would have been included in the plaintiff’s income if
 14 there had been enough evidence to show that plaintiff received them). However, as
 15 outlined in the Affidavit, California has the right to sue Yashar for reimbursement and
 16 legal fees. See 8 U.S.C. § 1183a(a)(1)(B).

17 **4. Pension from the Turkish Government**

18 Finally, Yashar claims that Ayla’s Turkish pension is income under 8 U.S.C. §
 19 1183a. Yashar Mot. at 2–3, 10–12. Ayla argues that the U.S.-Turkey Tax Treaty prohibits
 20 the United States from taxing her for her Turkish pension and, therefore, it is not income
 21 under 8 U.S.C. § 1183a. Ayla Mot. at 8–9 (citing 1996, U.S.-Turkey, Art. 19.2 TAX
 22 TREATIES (CCH) ¶ 10,103.19). As in her argument against counting food stamps as
 23 income, Ayla relies on 8 C.F.R. § 213a.1 to claim that 8 U.S.C. § 1183a uses the IRS’s
 24 definition of income. Ayla also cites to out-of-circuit authority suggesting that courts do
 25 not consider foreign assets as income that offsets a sponsor’s obligation. See Ayla Mot. at
 26 9 (citing Ainsworth v. Ainsworth, No. Civ. A. 02-1137-A, 2004 WL 5219037, at *3 (M.D.
 27 La. May 27, 2004)).

28 Ayla’s reliance on Ainsworth is misplaced. In dicta, the court in Ainsworth

1 suggested that if it were to determine what qualifies as income under 8 U.S.C. § 1183a, it
2 would not include foreign assets.⁵ Id. (the defendant had asserted that the “plaintiff may
3 own some assets in Honduras”). Unlike Ainsworth, where the court knew little about the
4 plaintiff’s assets, there is indisputable evidence that Ayla has earned a pension that
5 continues to accrue money and that can be quantified on an annual basis. See Yashar Decl.
6 Ex. I. Further, unlike some assets, such as real property, Ayla’s daughter presumably can
7 immediately withdraw funds from a bank account and transfer the funds to Ayla. See Ayla
8 2017 Decl. ¶ 4. Although Ayla declares that she “can’t access the funds from the United
9 States [and does] not receive any of the pension funds for use in the United States[,]” she
10 never asserts that she is unable to have her daughter or another agent transfer the funds to
11 her. See id. In fact, Ayla conceded that her adult “daughter in Turkey accesses the
12 pension funds and uses them to pay for her own living expenses in Turkey.” Ayla 2013
13 Decl. ¶ 17.

14 Ayla next relies on 8 C.F.R. § 213a.1(2) to construe “income” narrowly as reported
15 taxable income only in order to argue for the exclusion of her Turkish pension. See Ayla
16 Mot. at 8–9. Again, her reliance is misplaced. While the regulation defines “income” as
17 “adjusted gross income for those who file IRS Form 1040EZ[,]” this section specifically
18 applies to the sponsor, not the immigrant. See 8 C.F.R. § 213a.1(2). Further, tax policy
19 involves an entirely different set of considerations than the Affidavit, which is concerned
20 with preventing sponsored immigrants from becoming public charges.

21 Discounting Ayla’s pension fund as income when her daughter freely uses the funds
22 would contradict the logic set forth by the Ninth Circuit and would “lead[] to an untenable
23 result.” See Erler, 824 F.3d at 1178. The Ninth Circuit ruled that Yashar’s obligations to
24 Ayla should be measured by a one-person household standard, because he did not manifest
25

26 ⁵ The court in Ainsworth appeared hesitant to classify the plaintiff’s assets in Honduras as
27 income in part due to the lack of evidence of such assets. See 2004 WL 5219037, at *3. The court
28 could not engage in a full analysis of the assets and did not specify the type of assets or when the
assets were acquired. It is also unclear if the court wanted to exclude foreign assets categorically
or excluded them because the assets were acquired outside the relevant time period.

1 assent to support Ayla and her adult son. Id. The pension is Ayla’s. Ayla has not claimed
2 that there is no way for her to access the pension, which is distinguishable from
3 “contend[ing] that she cannot access the funds within the United States.” See id. at 1180.
4 While she might have to arrange a transfer with her daughter, she has chosen to allow her
5 daughter to use her pension funds. See Ayla 2013 Decl. ¶ 17. If Ayla could use the
6 money to support herself but instead chooses to let her daughter use it, her choice should
7 not negatively impact Yashar. Not counting the pension fund as income under 8 U.S.C. §
8 1183a forces Yashar to pay more. While Yashar will pay no more than 125% of the
9 Federal Poverty Guidelines, discounting Ayla’s Turkish pension allows her to either live
10 above 125% of the Federal Poverty Guidelines at Yashar’s expense or subsidize her adult
11 daughter in Turkey at Yashar’s expense—neither of which he committed to when he
12 signed the Affidavit.

13 Lastly, Ayla argues that even if her pension is income under 8 U.S.C. § 1183a, the
14 pension does not raise her income to 125% of the Federal Poverty Guidelines, and thus,
15 Yashar is still liable. See Ayla Mot. at 9–10. Yashar is still bound to support Ayla at
16 125% of the Federal Poverty Guidelines; it is not an all-or-none obligation as framed in
17 Ayla’s motion. See id. Because the pension fund is income, it reduces Yashar’s financial
18 obligation accordingly.

19 Ayla’s pension from her work in the Turkish Government is income under 8 U.S.C.
20 § 1183a and mitigates Yashar’s annual obligation accordingly. Considering that the
21 Turkish pension is currently quantified in Turkish Lira, the exchange rate between U.S.
22 Dollars and Turkish Lira fluctuates, and banks commonly charge customers for exchange
23 fees, the value of Ayla’s pension funds should reflect these realities when calculating
24 Yashar’s obligation.

25 **IV. CONCLUSION**

26 For the foregoing reasons, the Court DENIES Yashar’s motion for summary
27 judgment because Ayla did not earn sufficient income to discharge Yashar of his financial
28 responsibility. The Court GRANTS IN PART and DENIES IN PART Ayla’s motion for

1 summary judgment because Yashar owes Ayla some—but not all—of the money she
2 seeks. Because some of the financial statements provided by both parties are
3 approximations, the parties are ordered to appear before Magistrate Judge Cousins in order
4 to determine the exact amount due to Ayla according to the Court’s instructions.⁶ To
5 determine Yashar’s obligation for each year from 2011 to 2016, Magistrate Judge Cousins
6 shall subtract Ayla’s food stamps and annual Turkish pension from 125% of the Federal
7 Poverty Guidelines for a one-person household. Magistrate Judge Cousins shall also credit
8 Yashar for his \$3,500 payment to Ayla in 2011. See Ayla 2013 Decl. ¶ 12. Yashar has a
9 continuing obligation to support Ayla until one of the five conditions listed in the Affidavit
10 comes to fruition. He is also liable to the State of California for its past food stamp
11 payments to Ayla.

12 **IT IS SO ORDERED.**

13 Dated: November 15, 2017



14 CHARLES R. BREYER
15 United States District Judge

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⁶ Magistrate Judge Cousins should also look at the issue of attorneys’ fees.