

The document below is hereby signed.

Signed: January 22, 2019



S. Martin Teel, Jr.

S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)	
)	
NARAYANAN SWAMINATHAN,)	Case No. 18-00390
)	(Chapter 7)
Debtor.)	
_____)	
)	
VICTOR SANTORE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
NARAYANAN SWAMINATHAN,)	Adversary Proceeding No.
)	18-10025
Defendant.)	
)	Not for Publication in
)	West's Bankruptcy Reporter.

MEMORANDUM DECISION AND ORDER
GRANTING MOTION FOR DEFAULT JUDGMENT

The plaintiffs have filed a *Corrected Motion for Default Judgment* ("Motion") (Dkt. No. 17) seeking a nondischargeable judgment against the defendant in the amount of \$581,450.22, plus interest, costs, and attorney's fees, or in the alternative, that the debtor be denied a discharge. The court has already denied the defendant a discharge in Adversary Proceeding 18-10024, but because the debtor could seek to set aside that denial of

discharge, the court will proceed to address the plaintiffs' complaint seeking a judgment declaring the debts owed them to be nondischargeable and fixing the amounts owed. Accordingly, the court proceeds to determine the appropriateness of granting the plaintiffs' *Motion*. An *Entry of Default* was entered by the clerk on December 7, 2018, and the defendant has not filed a response to the *Motion*. Taking the facts alleged in the complaint to be accurate, it is appropriate to grant a default judgment. However, the *Motion* cannot be granted in its entirety. The plaintiffs' demand for prejudgment interest at the rate of 5.25% may not be granted, and will be modified for the reasons set forth below. Additionally, the plaintiffs have not shown a legal right to attorney's fees.

The plaintiffs seek prejudgment interest at the November 2018 prime rate of 5.25% calculated from June 19, 2016. There is no federal statute that governs the rate that should be applied to prejudgment interest. *Jones v. UNUM Life Ins. Co. of America*, 223 F.3d 130, 139 (2d Cir. 2000). It is within the court's discretion to compute prejudgment interest. *Berger v. Iron Workers Reinforced Rodmen, Local 201*, 170 F.3d 1111, 1139 (D.C. Cir. 1999). However, the D.C. Circuit has held that the prime rate is not only an appropriate rate, but agrees with the Seventh Circuit which has held that the prime rate is the more appropriate rate. *Forman v. Korean Air Lines Co., Ltd.*, 84 F.3d

446, 450 (D.C. Cir. 1996).

There does not seem to be any requirement that the prime rate be variable or set. Several courts have averaged the prime rate over the years from the date of the injury to the date of the judgment. See *Berger*, 170 F.3d at 1139; *Cement Div., Nat. Gypsum Co. v. City of Milwaukee*, 31 F. 3d 581, 587 (7th Cir. 1994); *Matter of Oil Spill by Amoco Cadiz Off Coast of France on March 16, 1978*, 954 F. 2d 1279, 1332 (7th Cir. 1992). The court in *Webster v. Harris Corp. (In re NETtel)*, 327 B.R. 8, 13-14 (Bankr. D.D.C. 2005), followed the proposal of the trustee calculating the prejudgment interest using the September prime rate of each year the proceeding had been pending with interest compounded on each anniversary.

The plaintiffs proposed a set rate using the prime rate from the month preceding the filing of the *Motion*, November 2018, which was at 5.25%, with interest not compounded. The court in *Amoco Cadiz* held that the court must use the rates in force during the case, not whatever rate prevails at the end of the case. 954 F.2d at 1333. Accordingly, the court will not adopt a prejudgment rate of 5.25%. However, the court will follow the plaintiff's proposal of using a set rate, rather than a variable rate, and will average the prime rate during the time the proceeding has been pending (June 2016 to January 2019). The

average rate during that time was 4.45%.¹ Therefore, the court will award prejudgment interest at the rate of 4.45%.

Accordingly, each plaintiff will be awarded their claim, plus prejudgment interest as follows:

- Victor Santore - Damages = \$40,983.03
Prejudgment interest = \$4,731.74
Total award of \$45,714.77.
- Alexis and Mariela Humphreys - Damages = \$81,963.04
Prejudgment interest = \$9,463.14
Total award of \$91,426.18.
- Mirza Abbas Raza - Damages = \$40,983.03
Prejudgment interest = \$4,731.74
Total award of \$45,714.77.
- Vinay Kadam Sadashiv - Damages = \$81,940.77
Prejudgment interest = \$9,460.57
Total award of \$91,401.34.
- Banmeet Saluja - Damages = \$184,313.10
Prejudgment interest = \$21,280.09
Total award of \$205,593.19.
- Harish Singh - Damages = \$40,983.03
Prejudgment interest = \$4,731.74

¹ This was arrived at by adding the monthly prime rates from June 2016 through January 2019, obtained from the Federal Reserve Data Download Program (available at <https://www.federalreserve.gov/datadownload/Choose.aspx?rel=H15>), equaling 138.15, and dividing that by the number of months, 31, arriving at 4.45.

