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CASE NO. 26-2285

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE:	) Bankruptcy Case No. 23-03639-CL7
	)
Rodrigo Aguirre,	)
	) BAP Case No. SC-25-1135-BLN
	)
Debtor/Appellee	) NINTH CIRCUIT Case No. 26-2285
-----	)
	) APPELLEE'S RESPONSIVE
Mario Mora,	) BRIEF TO THE APPEAL OF
Appellant	) CREDITOR MARIO MORA
	) RE APPELLEE'S RETURN TO HIS
vs.	) CCP 704.010 ET SEQ. HOMESTEAD
	) AND OTHER EXEMPTIONS
	)
Rodrigo Aguirre,	) Chapter 7
Appellee	)
-----	)

APPEAL FROM THE NINTH CIRCUIT BANKRUPTCY APPELLATE
PANEL

BRAND, LAFFERTY, and NIEMANN, BANKRUPTCY JUDGES,
PRESIDING

APPELLEE'S RESPONSIVE BRIEF

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DISCLOSURE STATEMENT

Both Appellant Mora and Appellee Aguirre are individuals.

There are no bankruptcy debtors not included in the caption above.

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ADDENDUM OF STATUTORY AUTHORITIES

Please see Appellee Aguirre’s Addendum Of Statutory Authorities for the full text of each statute referenced herein, arranged as in the list above. Such Addendum is the final pages of this Brief, following the Certificate of Service and beginning at page 59.

JURISDICTIONAL STATEMENT - APPELLEE’S RESPONSE TO APPELLANT’S “JURISDICTIONAL STATEMENT”

Counsel for Debtor/Appellee Aguirre has reviewed Appellant’s “Jurisdictional Statement” at pages 7&8 of Appellant’s Brief, and has no objection thereto.

PRELIMINARY NOTES

Preliminary Note 1 - All references to “ER” herein are to the Excerpts Of Record filed in this Case by Appellant Mora.

Preliminary Note 2 - All references to authorities in quoted passages of (1) the BAP’s Memorandum Opinion affirming Judge Latham’s Order, including in the footnotes thereto, at 1-ER-2-18, and (2) Judge Latham’s Order entered 7/21/25 Overruling Creditor Mora’s Objection To Debtor Aguirre returning to his homestead and other CCP§704.010 et seq. exemptions he took upon case filing, including in the footnotes thereto, at 1-ER 19-26, are intended to be deemed referenced and cited by Appellee herein for all purposes.

Preliminary Note 3 - All references herein to the “BAP” or the “Panel” are to the Ninth Circuit Bankruptcy Appellate Panel.

Preliminary Note 4 – all references herein to Judge Latham’s Order are to his Order entered 7/21/2025 overruling Creditor Mora’s Objection to Debtor Aguirre returning to his homestead and other CCP §704.010 et seq. exemptions.

Such Order was appealed to the BAP by Creditor/Appellant Mora. All references to “Mora’s Objection(s)” or to the “subject Objection(s)” are to such overruled Creditor Mora Objection(s).

Preliminary Note 5 – all references herein to the BAP Panel’s decision are to such Panel’s 11/19/25 “Memorandum” Opinion affirming of Judge Latham’s 7/21/25 Order. Such 11/19/25 Memorandum Opinion is the decision Appellant Mora appeals from herein. All references herein to “Appellee’s bankruptcy case” is to his Chapter 7 case #23-03639CL7 filed 11/21/23 and still pending before Judge Latham in San Diego, awaiting final resolution of Creditor Mora’s 2 pending Appeals now before this Court.

Preliminary Note 6 – Appellee’s counsel would normally respond to the various sections of any Memorandum or Brief in the same order as such initial document was organized. In this case, however, he is aware that FRAP Rule 28 (a)&(b) provides that the various sections of both an Appellant’s Brief and an Appellee’s Brief should be organized as provided in such Rule. Appellant’s Brief is generally very consistent with the required organization, but does deviate in a few instances – in those instances counsel will follow as best he can the required section organization, with apologies if that makes it more difficult to review the two Briefs side by side.

Preliminary Note 7 – Appellee’s counsel deliberated how to refer to the subject written Waiver. As such document is entitled a “Mutual Waiver”, he uses that instead of the “Spousal Waiver” term often used by the Court and counsel. Although the Waiver was signed by Debtor and his wife, Judge Latham determined, found and held that both such signings were ineffective at all times, which appears to be the case. Rather than refer to such as an “Alleged Waiver” or a “Purported waiver”, which appear to be accurate terms, counsel will generally use “Mutual Waiver”. Such usage herein should not be interpreted as any “admission” that an effective waiver exists – it is merely a reference to a particular document, and no such reference should be interpreted as anything more than that.

Preliminary Note 8 – Appellee’s counsel has only filed documents in 4 appeals in 48 years as a sole practitioner – two such cases over 30 years ago and the other two dealing with Creditor Mora’s 2 subject appeals to the BAP and this Court against Debtor Aguirre stemming from the same Bankruptcy case. If he violates some appellate or local rules or customs, it is from lack of knowledge and experience, not intent, and he will do his best to correct any correctable errors which he makes.

Preliminary Note 9 – All references herein to “Debtor’s home” are to his long-time owned home at 1939-41 Ensenada St., Lemon Grove, CA 91945.

**ISSUES PRESENTED - APPELLEE’S RESPONSE TO APPELLANT’S
“ISSUES ON APPEAL”**

Pages 8-9 of Appellant’s Opening Brief have a section entitled “ISSUES ON APPEAL”, with 3 listed issues, which Appellee responds to in part as follows:

Appellant’s Issue #1 is: “Whether Debtor’s spousal waiver was effective, as Debtor chose to file a spousal waiver (while represented by counsel) and therefore had to properly seek to withdraw it.”.

As to Appellant’s Issue #1, Appellee would restate Appellant’s wording as follows: “Whether the Mutual Waiver form which Debtor and his wife signed was effective at any time as a legal matter under the applicable law and the facts, including the law and the facts found, referenced, and/or described by Judge Latham in his 7/21/25 Order.”.

Appellant’s Issue #2 is: “Whether a spousal waiver binds a Debtor and the Debtor’s non-filing spouse absent a timely and properly supported relief requested under F.R. Bankr. P. 9024/F.R. Civ. P. 60.”.

As to Appellant’s Issue #2, Appellee would restate Appellant’s wording as follows: “Assuming that the Mutual Waiver was never effective as determined under Issue #1, is there any reason for Debtor/Appellee to seek any relief under FRCP Rule 60 and/or FRBP Rule 9024? Even if such Waiver was otherwise considered effective, has there been any final Judgment, final Order or final Proceeding to date from which Debtor had an opportunity to properly request

judicial relief pursuant to FRCP Rule 60 and/or FRBP Rule 9024 regarding any effect of the signing of the subject Mutual Waiver form?”

In addition, such “Issue #2” is not relevant in this case as Judge Latham found and ruled that under the facts in this case, and the applicable law, the subject signing of the subject Mutual Waiver form (also known as a “Spousal Waiver”) by Debtor Aguirre and his wife was not an effective waiver by both spouses as required under applicable law. In fact, Judge Latham found and held that **neither** such signing was an effective waiver: as to Debtor’s wife, Judge Latham found that she had no ownership interest in the subject real property as required under applicable code (so she had nothing to waive) – as to Debtor, Judge Latham found and held that Debtor had been convinced by what he had heard from Appellant’s attorney and the Chapter 7 Trustee at one of his 341(a) Meetings of Creditors, and, it appears, by his own attorney very shortly after such Meeting, to the effect that he could no longer claim the homestead exemption which had protected his home equity for many years.

Appellee’s counsel believes that there was no bad intention by either of those attorneys, or Trustee Stadtmueller, with what was said at or just shortly after such Meeting – it is likely that they were not aware of facts such as (1) Debtor recording a homestead exemption in 2005 (see Appellee Aguirre Declaration at 2-ER-144), (2) Debtor considering his subject home as his

domicile at all times relevant herein, and intending to renew his residency there as soon as possible at all times relevant herein, (see 2-ER-142-143) and/or (3) the reasons why Debtor vacated residence of his home and has not yet returned, (see 2-ER-142-143) and/or the relevant law, such as CCP §704.710(c) providing that when a bankruptcy Debtor's spouse lives in subject real property, such Debtor may claim that property exempt under CCP §704.010 et seq. even if such Debtor does not reside there when the case is filed.

Appellant's Issue #3 is "Whether the Bankruptcy Court erred with regard to the doctrine of equitable estoppel."

As to Appellant's Issue #3, Appellee would restate such issue as follows: "Whether the Bankruptcy Court erred with regard to the doctrine of equitable estoppel in any material manner which materially and negatively affected Appellant Mora."

In his Brief, Appellant Mora has not pointed to any factual finding made by Judge Latham in his Order (1-ER-19-26) which appears to be "clear error" or "illogical, implausible, or without support in the record". Likewise, Appellant Mora has neither argued nor shown in his Brief that any portion of Judge Latham's Order which did not to apply the doctrine of equitable estoppel in a manner Appellant would like was an "abuse of discretion" as referenced and described by the BAP in the following paragraph.

In its Memorandum Opinion, the BAP states that the appropriate standard of appellate review re the doctrine of equitable estoppel is described as follows:

“We review the bankruptcy court's decision whether to apply equitable estoppel for an abuse of discretion. *Parker v. Smith (In re Smith)*, BAP No. EC-16-1140-BJuTa, 2017 WL 1457942, at *4 (9th Cir. BAP Apr. 24, 2017) (citing *Leong v. Potter*, 347 F.3d 1117, 1121 (9th Cir. 2003)). A bankruptcy court abuses its discretion if it applies an incorrect legal standard, misapplies the correct legal standard, or makes factual findings that are illogical, implausible, or without support in the record. *United States v. Hinkson*, 585 F.3d 1247, 1261-62 (9th Cir. 2009)” (emphasis added)(see 1-ER-9)

Appellant Mora’s 3 issues are further discussed at pages 26-54 below.

STATEMENT OF THE CASE

Appellant Mora did not provide a section called “Statement of the Case” in his Brief, although he included most or all of the information which could be included in such Statement in other sections of his Brief, including Appellant’s description/version of the relevant facts, procedural history, and identifying the subject rulings. Appellee responded to those inclusions in such other sections.

In short, this case started with Judge Latham, Debtor Rodrigo Aguirre and Creditor Mario Mora in the San Diego Bankruptcy Court - Judge Latham’s Order Overruling Objection to Exemptions was appealed by Creditor Mora to the BAP, and the BAP’s approval of what Judge Latham had ordered was appealed again by Creditor Mora to this Court. The rulings for review are the

BAP Memorandum Opinion at 1-ER-2-18 and, to the extent applicable, Judge Latham's Order at 1-ER-19-26 which was affirmed by the BAP Opinion.

**SUMMARY OF THE ARGUMENT(S) AND INTRODUCTION -
APPELLEE'S CASE BACKGROUND, INTRODUCTION, AND
RESPONSE TO APPELLANT'S SECTION ENTITLED
"INTRODUCTION/SUMMARY OF ARGUMENT"**

Pages 6-7 of Appellant's Opening Brief have a section entitled "INTRODUCTION/SUMMARY OF THE ARGUMENT". In addition to his points elsewhere in this Brief, Appellee Aguirre responds to such section, including with his own Background, Introduction, and Response To Appellant's Introduction/Summary of Arguments, as follows:

Summary Of The Argument(s)

The argument(s) can be summarized as follows:

Debtor Aguirre filed what should have been a very routine Chapter 7 case. He elected the CCP §704.010 set of exemptions and exempted his home. As fully described below, Debtor heard from Creditor Mora's attorney and the Chapter 7 Trustee, and was advised by his own attorney, that he could not claim such homestead because he was not residing at his home at time of case filing. On advice of his counsel, (1) Debtor and his non-BK-filing wife signed a Mutual Waiver form ostensibly waiving his right to use the §704.010 set of exemptions and, (2) Debtor changed to the CCP §703.140 set of exemptions, ostensibly losing his homestead exemption. Debtor thereafter retained Special Counsel to

represent him re such exemption issue, was advised that he is definitely entitled to his initial exemptions under CCP§704.010 et seq., and filed an Amendment changing back to such CCP §704 set of exemptions. Creditor Mora filed an Objection to such change. Judge Latham overruled such Objection, the BAP agreed with Judge Latham, and the matter is now before you.

Debtor argued that under applicable code he was (and remains) entitled to return to this initial CCP §704 exemptions. Judge Latham found and ruled that, for various reasons, such Waiver was never effective, and the BAP agreed with him. Appellee also believes and argues the such Waiver was never applicable because there was no subject final Judgment, final Order or final Proceeding

Creditor Mora argues that Debtor cannot return to his CCP §704 exemptions without seeking relief under FRCB Rule 60, which is applicable to bankruptcy cases via FRBP Rule 9024. Debtor Aguirre argues that such relief is not needed and not applicable, Judge Latham ruled and ordered that no such relief is needed because the Waiver was never effective, and the BAP agreed with him. Such Rule 60 is only available when a party wishes to set aside a subject final Judgment, final Order or final Proceeding. In this case there was no such Judgment, Order or Proceeding which Debtor wants set aside.

Finally, Creditor Mora also argues that Debtor is somehow blocked from returning to his CCP §704 set of exemptions by the doctrine of equitable

estoppel, but Judge Latham disagreed with such argument and the BAP agreed with him.

Appellee's Case Background, Introduction and Response to Appellant's Introduction/Summary of the Argument

1. Appellee's attorney Babcock was unaware of this case until he was contacted by an attorney who is a friend of Debtor and does not do bankruptcy work. Such attorney advised Babcock that, as he understood, at one of the §341(a) Meetings of Creditors (and/or immediately thereafter) Debtor had been told/advised by Creditor Mora's attorney herein, by Debtor's Chapter 7 Trustee Ronald Stadtmueller (Debtor's counsel believes mistakenly and innocently), and, it appears, by Debtor's own attorney, Andrew Griffin, that he was no longer entitled to a homestead exemption re his long-time home. Following attorney Griffin's advice, very shortly after such §341(a) Meeting Debtor/Appellee Aguirre signed a Mutual Waiver form (the subject "Waiver" and often referred to as a "Spousal Waiver") and also signed an Amendment of his Schedules which attorney Griffin prepared and presented him, changing from his initially-claimed exemptions under CCP §704.010 et seq. to the group of exemptions under CCP §703.140 et seq.. By doing so, Appellee ostensibly stopped claiming his CCP §704.010 et seq. homestead exemption in his bankruptcy case, which had been apparently protecting over \$200,000 of Debtor's equity in his home.

2. Attorney Babcock determined that Debtor/Appellee Aguirre was indeed clearly entitled to his CCP §704.010 et seq. homestead exemption at his 11/21/23 case filing for multiple reasons described below, including (1) the subject home is Debtor's long-time domicile and he intends to return to his residence there, (2) Debtor's wife resided at such home on the 11/21/23 case filing date, and CCP §704.710(c) provides that her residence there at such time gives Debtor a CCP §704.010 et seq. homestead exemption, and (3) Debtor recorded a homestead declaration in San Diego County many years ago to protect his equity in his subject home. (see 2-ER-144). Debtor Aguirre retained Babcock in 2025 as his Special Counsel to fix such change of exemption error. Shortly thereafter, on 4/3/25, attorney Babcock had Debtor file Amended Schedules to again claim his homestead exemption and other exemptions under CCP §704.010 et seq..

3. In Appellee's Chapter 7 case, Appellant Mora filed an adversary complaint alleging that Debtor should be denied his discharge or, alternatively, that any debt owed from Debtor Aguirre to Appellant Mora should be declared as "nondischargeable". Bankruptcy Judge Christopher Latham dismissed such Complaint without prejudice due to Appellant Mora's failure to state a cause of action, and likewise dismissed Appellant's First Amended Complaint and Second Amended Complaint for the same reason. When Judge Latham also

dismissed Appellant Mora's Third Amended Complaint for the same reason, he did so "with prejudice" against refiling any such Complaint again. Appellant Mora appealed such "with prejudice" Dismissal to the BAP, who agreed with Judge Latham. Appellant Mora appealed such BAP ruling, creating the Ninth Circuit related case #25-7614 regarding such dismissed Complaints, which case is currently before you in addition to this case.

4. In addition to the above-described Adversary Proceeding and appeals therefrom, Appellant Mora also filed an Objection in the Chapter 7 case to Debtor exempting his home and other assets under the exemptions available to him under CCP §704.010 et seq. Judge Latham denied such Objection in its entirety, and Appellant Mora appealed such denial to the BAP Panel. Such Panel agreed with Judge Latham and affirmed such denial. Appellant has appealed such affirmation to this Court, creating this case #26-2285.

5. Regarding such CCP §704.010 exemption issue, attorney Babcock herein has represented Debtor Aguirre before Judge Latham in the Bankruptcy Court and before the BAP in case #25-1135.

6. Regarding the discharge and dischargeability issues which are already before this Court, and the subject of your case #25-7614, attorney Griffin successfully represented Debtor before Judge Latham. When Creditor Mora filed his Appeal to the BAP of Judge Latham's decision to dismiss Creditor

Mora's Third Amended Adversary Complaint with prejudice for failure to state a cause of action, attorney Griffin did not file a Responsive Brief. When attorney Babcock realized that Mr. Griffin had not filed, and apparently was not going to file, a Responsive Brief, he made a last-minute request to the BAP to allow him some time to review the issues herein and file such a Brief – such request was understandably denied as untimely. Fortunately for Appellee, the BAP Panel apparently did not need any input from either attorney Griffin or attorney Babcock to deny Appellant Mora's Appeal. It is that "unopposed" decision which is now before this Court as case #25-7614. Regarding such discharge/dischargeability issues, attorney Babcock has only prepared Appellee's Response to Appellant Mora's appeal from the BAP.

7. In this case, Appellant Mora is appealing the Memorandum Opinion reached and filed by the Ninth Circuit BAP on 4/2/26 in the above-referenced BAP case SC-25-1135. A copy of such BAP Opinion is Appellant's 1-ER-2-18.

THE BAP DISCUSSES EXEMPTIONS AVAILABLE IN A CALIFORNIA BANKRUPTCY CASE

At pages 8-9 of its Opinion, the BAP was kind enough to include the following background regarding exemptions available in a California case:

“California has opted out of the federal exemption scheme and permits its debtors only the exemptions allowable under state law. CCP § 703.130. Consequently, California law defines a debtor's right to claim particular exemptions and the

amount of those exemptions. *See Law v. Siegel*, 571 U.S. 415, 425 (2014) (noting the scope of a state-created exemption is determined by state law, "which may provide that certain types of debtor misconduct warrant denial of the exemption."); *Canino v. Bleau (In re Canino)*, 185 B.R. 584, 590 (9th Cir. BAP 1995) (noting that "substantive issues regarding claimed exemptions are governed by California law.").

California debtors can choose from two mutually exclusive exemption schemes: (1) the "regular exemptions" under CCP § 704.010 et seq. available to judgment debtors outside of bankruptcy; or (2) the "special exemptions" under CCP § 703.140(b) available only to bankruptcy debtors. *See* CCP § 703.140(a). The regular exemptions provide a generous homestead exemption, while the special exemptions provide a small homestead exemption but a generous "wildcard" exemption that can be used to protect any asset. *See In re Gomez*, 530 B.R. 751, 754-55 (Bankr. E.D. Cal. 2015) (explaining the two exemption schemes).

California exemptions are broadly and liberally construed in favor of the debtor. *In re Elliott*, 523 B.R. at 192. (proper cite is 523 B.R. 188, 192) Rule 1009(a) permits debtors to amend their claims of exemptions "as a matter of course at any time before the case is closed," and Rule 4003(b)(1) gives any creditor or the trustee 30 days to object to the amendment. Nonetheless, amending a Schedule C to claim an exemption is a separate question from whether the exemption is allowable. *Andermahr v. Barrus (In re Andermahr)*, 30 B.R. 532, 534 (9th Cir. BAP 1983); *In re Gonzalez*, 620 B.R. 296, 311-12 (Bankr. C.D. Cal. 2019) (citations omitted)." (emphasis added)

THE NINTH CIRCUIT DISCUSSES EXEMPTIONS, AND CHANGE THEREOF, IN ITS 2025 WARFIELD V. NANCE (In re Nance) DECISION

In *Warfield v. Nance (In re Nance)* 156 F.4th 961, 968&969 (2025) the Ninth Circuit summed up applicable law re a change in exemptions as follows:

“Our determination is further supported by significant policy interests. The Bankruptcy Code is constructed to ‘preserve debtors’ ability to meet their basic needs and ensure that they have a fresh

start. (citations) The House and Senate Reports accompanying the Bankruptcy code reaffirm that §522 was drafted to permit a debtor ‘to make full use of the exemptions to which he is entitled under the law’. (citations) Moreover, ‘the exemption statutes in bankruptcy law should be construed liberally in favor of the debtor’(citations).....Our conclusion also finds explicit support in the Rules, which instruct that a debtor may amend their schedule ‘at any time before the case is closed’”, citing FRBP 1009(a).

APPELLEE’S ARGUMENT AND RESPONSE TO APPELLANT’S ARGUMENT, ARRANGED IN THE FOLLOWING 5 SUBSECTIONS, AS IN APPELLANT’S BRIEF:

SUBSECTION 1. STANDARD OF REVIEW

SUBSECTION 2. ISSUES ON APPEAL

SUBSECTION 3. STATEMENT OF FACTS

SUBSECTION 4. EFFECTIVENESS OF THE SPOUSAL WAIVER

SUBSECTION 5. EQUITABLE ESTOPPEL

SUBSECTION 1: STANDARD OF REVIEW

APPELLEE’S RESPONSE TO APPELLANT’S SECTION ENTITLED “STANDARD OF REVIEW”

Page 8 of Appellant’s Brief has a section entitled “STANDARD OF REVIEW”. In addition to the discussion of the applicable standards elsewhere herein, Appellee Aguirre responds to such section as follows:

It is Appellee’s understanding that, on appeal to the BAP and the Ninth Circuit, legal issues are decided de novo, and factual issues determined by the Bankruptcy Court or the BAP are overturned only upon a showing of clear error. The BAP has much more experience, and a fuller explanation of such standards, as follows:

The Standard Of Review Discussed By The BAP

At pages 7&8 of its 4/2/26 Opinion in this case, the BAP Opinion discussed the applicable Standards of Review it used in making such Opinion, as follows:

“We review the bankruptcy court's interpretation of state exemption laws de novo. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 333 (9th Cir. BAP 2016). De novo means that we review a matter anew, as if no decision had previously been rendered. *Id.* at 333-34. (see 1-ER-8&9)

We review the bankruptcy court's findings of fact with respect to a claimed exemption for clear error. *Elliott v. Weil (In re Elliott)*, 523 B.R. 188, 191 (9th Cir. BAP 2014). Factual findings are clearly erroneous if they are illogical, implausible, or without support in the record.” *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010). (emphasis added) (see 1-ER-9)

“We review the bankruptcy court's decision whether to apply equitable estoppel for an abuse of discretion. *Parker v. Smith (In re Smith)*, BAP No. EC-16-1140-BJuTa, 2017 WL 1457942, at *4 (9th Cir. BAP Apr. 24, 2017) (citing *Leong v. Potter*, 347 F.3d 1117, 1121 (9th Cir. 2003)). A bankruptcy court abuses its discretion if it applies an incorrect legal standard, misapplies the correct legal standard, or makes factual findings that are illogical, implausible, or without support in the record. *United States v. Hinkson*, 585 F.3d 1247, 1261-62 (9th Cir. 2009).” (emphasis added) (see 1-ER-9)

Appellee's Additional Comments Re Standard Of Review

Appellee Aguirre's counsel is certain that both the BAP and the Ninth Circuit Court are far more familiar than he will ever be regarding the proper standard of review. In addition, Appellee agrees with the standard used by the BAP Panel, and expect this Court will (1) make sure the BAP used the proper standard of

review, and (2) likewise use the proper standard(s) in its review of the BAP's and/or Judge Latham's order(s), memorandum(s), ruling(s), finding(s), opinion(s)...etc.

In the unlikely event this Court finds that the BAP used the wrong standard of review, Appellee Aguirre respectfully requests that you recognize that Appellee should, as a matter of equity, not bear any burden or suffer any harm due to any such error, and remand this case to the BAP Panel or Judge Latham for re-review under what you instruct is the correct standard. Hopefully, **none** of that will be needed, but if it is, thank you for heeding such request.

At page 8 of his Brief, Appellant states that "De novo review is independent, with no deference given to the trial court's conclusion.", citing *Barclay v. Mackenzie (In re AFI Holding, Inc.)* at 525 F.3d 700, 702. (9th Cir. 2008)

A review of that *Barclay v. Mackenzie (aka AFI Holding, Inc.)* decision, however, appears to show that the Standard of Review being discussed by the Court therein, in the portion of its decision at page 702 with the wording referenced by Appellant, was regarding review of the District Court's interpretation and/or application of the **law**, not any conclusion as to **fact**. The sentence after the portion of such decision saying "No deference is given to the district court's decision." is "Summary judgment is to be granted if the pleading and supporting documents, viewed in the light most favorable to the non-moving

party, show that there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. Fed. Rule. Civ. P. 56(c).”.

Both parties agree that this Court’s review as to the law is a de novo review, and that seems to be all Appellant’s referenced portion of the Barclay v. Mackenzie decision says.

The point of this paragraph is that this Court should do what the BAP did: **accept the Bankruptcy Court’s findings, descriptions and references re facts, undisputable facts and certain undisputed facts**, and review the applicable **law on a de novo basis**.

SUBSECTION 2. ISSUES PRESENTED ON APPEAL

APPELLEE’S RESPONSE TO APPELLANT’S SECTION ENTITLED “ISSUES ON APPEAL”

At pages 8&9 of his Brief, Appellant has a section entitled “ISSUES ON APPEAL”, listing 3 issues:

Appellant’s Issue #1 is whether Debtor’s spousal waiver was effective.

Appellant’s Issue #2 is whether a spousal waiver binds a debtor and debtor’s non-filing spouse absent timely and properly supported relief under FRBP Rule 9024/FRCP Rule 60.

Appellant’s Issue #3 is whether Judge Latham at the Bankruptcy Court erred with regard to the doctrine of equitable estoppel.

In addition to his discussion of such 3 issues herein at pages 11-14 19-22 above, Appellee Aguirre responds to Appellant's points regarding each such Appellant Issue in the order in which they are raised in Appellant's Brief, as follows:

Appellant's **Issue #1** listed at page 9 of his Appellant's Brief, and discussed at pages 12–15 thereof, **"Whether Debtor's spousal waiver was effective..."**. When such issue was before him, Judge Latham addressed it on pages 4,5, and the top portion of page 6, of his 7/21/25 Order. (1-ER-22-24) At the bottom of page 4 thereof, Judge Latham noted that **"California exemptions are broadly and liberally construed in debtor's favor"**, (emphasis added) with citations hereby adopted herein. Regarding that liberal construction, please see *In Re Sain* at 584 B.R. 325, 330-333 (2018), *Haaland v. Corporate Management, Inc.* 172 B.R. 74, 78&79(1989), *Elliott v. Weil* (2014) 523 B.R. 188, 191-193 and *Webb v. Trippet* (1991) 235 Cal App 3d 605, 647 (1991). The Courts in *In Re Gilman* and *In Re Diaz* held that "...the allowance or disallowance of his claims is governed by California law" – please see *In re Gilman* (2016) 887 F.3d 956,964, and *In Re Diaz* (2016) 547 B.R. 329, 334 (9th Circuit BAP).

Judge Latham also noted on page 4 of his Order (1-ER-22) that under FRBP Rule 1009 a "schedule...**may be amended by the debtor as a matter of course**

at any time before the case is closed” (emphasis added), with citations adopted herein. In this case, Debtor’s initial exemptions were CCP §704.010 et seq.

Appellant’s **Issue #2** listed at page 9 of Appellant’s Brief, and discussed at pages 14&15 thereof, is **“Whether a spousal waiver binds a Debtor and the debtor’s non-filing spouse absent relief timely and properly supported requested relief under F.R.B.P. 9024/F.R.Civ.P. 60”**. As noted herein, neither the signing of the subject Spousal Waiver nor the filing of such with the Bankruptcy Court appears to be a final Judgment, a final Order, or a final Proceeding and, therefore, neither FRCP Rule 60(b) nor FRBP Rule 9024 relief has been, or is, available for relief from signing such Waiver. As noted by Judge Latham near the bottom of page 5 and the top portion of page 6 of his 7/21/25 Order (see 1-ER-23&24), in this case the signed Mutual Waiver form was ineffective under the facts as he saw and found such facts to be.

Based in part on Judge Latham’s finding that the signed Waiver form was ineffective, (1) no “withdrawal” of such Waiver was ever needed by (or, apparently, available to) Debtor/Appellee, and (2) no FRCP Rule 60 and/or FRBP Rule 9024 relief was ever needed by (or, apparently, available to) Debtor/Appellee in connection with such Mutual Waiver. See 1-ER-23-24.

Appellant’s **Issue #3** listed at page 9 of Appellant’s Brief, and discussed at pages 16-20 thereof, is **“Whether the Bankruptcy Court erred with regard to**

the doctrine of equitable estoppel. Appellee addresses such Issue elsewhere herein, including at pages 47-54 below.

SUBSECTION 3: STATEMENT OF FACTS

APPELLEE’S RESPONSE TO APPELLANT’S SECTION ENTITLED “STATEMENT OF FACTS”

At pages 9-12 of his Brief, Appellant has a section entitled “STATEMENT OF FACTS”. In addition to his discussions of the facts elsewhere in this Brief, Appellee responds to Appellant’s Statement of Facts as follows:

At pages 1-ER-2&3, the BAP Memorandum Opinion sets forth a brief “Introduction” containing some facts and conclusions. Appellant Mora fails to either dispute or otherwise address any of the BAP’s facts or conclusions described in such Introduction, leading Appellee Aguirre to conclude that such facts and conclusions are true and correct – this Court should conclude likewise.

Near the bottom of page 9 of his Brief, Appellant Mora argues that “Debtor agreed, by stipulating to the judgment by Mora, that Debtor committed fraud against Mora.”. That is simply not the case. In short, such referenced stipulated judgment appears to be the result of an “in court” verbal stipulation, speaks for itself, and makes no reference whatsoever to any fraud. **A copy of such**

three-page form Judgment is attached as Exhibit 12 to the Declaration of Debtor/Appellee's Special Counsel Bruce Babcock at 2-ER 36-141, with such three-page Judgment being 2-ER-96-98.

At the top of page 10 of his Brief, Appellant Mora notes that he recorded his judgment against Appellee Aguirre, "which made Mora a secured creditor."

Appellant Mora does not have any secured interest in any particular real or personal property based on any voluntary agreement, such as a trust deed, granting any such secured interest. Appellant does have a simple monetary California Superior Court Judgment against Appellee for approximately \$73,500, and has apparently recorded an abstract of such Judgment, which puts a judicial lien against Appellee's interest in his real estate home. An agreed lien, such as a trust deed, has priority over a homestead exemption. A judgment lien, such as the one Creditor/Appellant Mora has, does not have such priority. Such subject Judgment is a plain and simple money Judgment which reflects that it was stipulated to by Appellant and Appellee in open Court. **Such Judgment speaks for itself, and speaks no reference to any alleged fraud or related claim.** (please see such Judgment at 2-ER-96-98)

On page 10 of his Brief, Appellant Mora states that "Debtor's bankruptcy schedules reflected that Debtor had an interest in a residential property located at 1939-41 Ensenada Street in Lemon Grove." Yes, he did at that time, and he

still does. On the 11/21/23 case filing date, and all times thereafter, Debtor/Appellee Aguirre has owned a 1/2 interest in such real property. The references by Appellant Mora near the bottom of such page 10 to two alleged transfers of some or all of such interest are to two deeds from 2005, and appear to be irrelevant to this Appeal. See 2-ER-69-72.

On page 10 of his Brief, Appellant quotes a portion of the subject Mutual Waiver form, which provides:

“RIGHT TO HAVE INDEPENDENT COUNSEL REVIEW
WAIVER. Both parties acknowledge that they have been informed of their right to consult any attorney regarding the effect of this waiver on them.”.

The record is clear (see Debtor/Appellee’s Bankruptcy Court Declaration at 2-ER-143-144) regarding the 6/30/25 hearing which resulted in Judge Latham’s 7/21/25 Order at 1-ER-19-26) to the effect that Debtor/Appellee was advised/instructed by his bankruptcy attorney, Andrew Griffin, to sign such Mutual Waiver form, and that attorney Griffin thereafter prepared an Amendment changing from the CCP §704.010 et seq. exemptions to the CCP §703.140 et seq. exemptions, and advised/instructed Debtor to sign such as well. One very important fact, discussed throughout this Brief, is that at the time of signing such Waiver, Debtor/Appellee Aguirre understandably relied on what he had been (mistakenly) told by (1) Appellant’s attorney, (2) Debtor’s Chapter 7

Trustee (Ronald Stadtmueller), and (3) his own attorney (Andrew Griffin) to the effect that he no longer qualified for his long-standing homestead exemption.

Because of such events and resulting not surprising lack of understanding by Debtor Aguirre, his signing of such Waiver was not an “intentional relinquishment of a known right” as required for a binding waiver under California law discussed herein. At the very bottom of the 5th page of his Order (1-ER-23), Judge Latham cites Roesch v. DeMota 24 Cal. 2d 563, 572 (1944) for its observation that **“Under California law, a waiver is an intentional relinquishment of a known right.”** (emphasis added)

In his Brief, near the middle of page 10, Appellant Mora states that Debtor Aguirre “...with the assistance of counsel, filed the Aguirre Spousal Waiver in his bankruptcy...”. That is somewhat true, although the word “assistance” generally implies some benefit to the “assisted” person. In this case, the record makes it clear that Debtor signing (and having his wife sign) such Mutual Waiver form was a potential huge and unnecessary damage to Debtor as he had no obligation whatsoever under applicable law to do so. It is also very clear that Appellee Aguirre only signed such form because, at the subject §341(a) Meeting of Creditors, he was told by both Appellant’s attorney and Debtor’s Chapter 7 Trustee, Ronald Stadtmueller, during such meeting, and apparently by Debtor’s own attorney very shortly after such Meeting concluded, that he could not

continue to claim a homestead exemption in his home because he was no longer residing in such home at the time of his 11/21/23 case filing.

On page 11 of his Brief, Appellant notes that Debtor filed a Motion to convert his case to one under Chapter 13. Such Motion was filed on 4/15/24, and a review of the record shows that Judge Latham denied such Motion on 5/9/24, apparently because it appeared to him at that time, that Debtor had lost his homestead exemption due to the signing of the subject Mutual Waiver, and that the unsecured creditors would receive more from the Chapter 7 Trustee liquidating Debtor's interest in his home than under the proposed Chapter 13 Plan. It was not until much later, (after Debtor's filing of amended Schedules returning to CCP 704.010 et seq. exemptions filed 4/3/25 (2-ER-182), after Creditor Mora's Objection to such was filed 5/3/25 (2-ER-176-181), and after Debtor's Response was filed 5/19/25 (2-ER-36-175)) that Judge Latham apparently became aware that: (1) that at all times relevant Debtor's wife lived (and still lives) at Debtor's home at 1939-41 Ensenada St., Lemon Grove, CA 91945, qualifying Debtor for his homestead under CCP §704.710(c), (2) that at all times relevant Debtor intended (and still intends) to return to his domicile/home and family as his homestead, (3) that in or about 2005 Debtor Aguirre recorded a homestead declaration with the San Diego County Recorder's office, and concluded that, due in part to such facts, the subject

Mutual Waiver was not effective and should be disregarded. Such Motion and decision re a possible conversion to Chapter 13 do not appear to be relevant to any issues now before this Court.

At pages 11&12 of his Brief, Appellant notes that “Debtor retained a new additional attorney and filed an amended exemption claiming a homestead regarding the Property.”. Such attorney is Appellee’s Special Counsel Bruce Babcock and such Amendment was filed 4/3/25, and is at 2-ER-182. Appellant notes that he opposed such amended exemptions, in which Debtor returned to the CCP §704.010 et seq. exemptions he began the case with.

On page 12 of his Brief, Appellant states that Appellee’s Special Counsel (Bruce Babcock, apparently at the 6/30/25 hearing before Judge Latham on Creditor Mora’s objection to Debtor Aguirre’s return to his CCP §704.010 et seq, exemptions) “acknowledged that Rule 60 applied to any request to withdraw the Aguirre Spousal...”, citing a transcript. Perhaps he simply missed it, but Appellee’s counsel cannot find such transcript in the Appellant’s Excerpts Of Record and, if he ever had a copy thereof, he cannot find it now.

In any event, any such oral statement referred to by Appellant Mora would need to be read in light of a copy of a transcript of the entire hearing, apparently the 6/30/25 hearing before Judge Latham. In addition, Appellee believes that the most accurate statement of Appellee’s position with regard to such 6/30/25

hearing is in his Memorandum filed 5/19/25 for such hearing, which hearing resulted in the Court's subject 7/21/25 Order.

Such Memorandum is at 2-ER-145-176. At 2-ER-168, and provides:

“If this Court believes that under the facts and law in this matter Debtor is entitled to any appropriate relief pursuant to CCP §473, Debtor hereby requests such relief. In the event that the Court believes that a motion from Debtor for any relief pursuant to such CCP §473 would be appropriate to give Debtor an opportunity to retract the subject Mutual Waiver, and/or to possibly obtain relief from the effects of his signing and filing such Waiver, and/or to obtain relief from any relevant errors that he, or any attorney who has represented him, has made, Debtor hereby asks for an opportunity to file such motion.”.

When he wrote such 5/19/25 Memorandum, Debtor's counsel was uncertain whether CCP§473, or its federal counterparts of FRCP Rule 60 and FRBP Rule 9024, would control such issue, as California law is sometimes applied to California exemption issues in Bankruptcy. Rule 60 is available in Bankruptcy cases pursuant to FRBP Rule 9024. Counsel believes that all other references in such Memorandum are to the two federal Rules, and not to CCP §473)

To cover both possibilities, the next page (2-ER-169) similarly provides:

“In the event that the Court believes that a motion from Debtor for any relief pursuant to such FRCP 60 would be appropriate to give Debtor an opportunity to retract the subject Mutual Waiver, and/or to obtain relief from any relevant errors that he, or any attorney who has represented him, has made, Debtor hereby asks for an opportunity to file such motion.”.

Perhaps the most important word in such first quote above is the first word, a little word, **the word “If”**. In the second quote above, such **“If”** is replaced by **“In the event”**, which pretty much means the same thing, but provides a bit of variety in the text. It certainly appears that such “If” and “In the event” never happened – if Judge Latham ever had any such belief, he did not share it so far as Appellee Aguirre’s counsel is aware. As we now know from his 9/21/25 Order, Judge Latham concluded that no such relief was necessary because (1) the subject Waiver was ineffective, and (2) Debtor always retained the right to amend his exemptions back to the CCP §704.010 et seq. exemptions he claimed in his initial Schedules. Such 2 passages in Appellee’s Brief in no way indicate that at any time Debtor/Appellee was entitled to, desired, or needed any such relief, or believed he was so entitle or in need – his requests in such passages were **conditioned** upon Judge Latham believing that any such relief was necessary, which condition apparently never happened.

Such two statements are both **contingent on the possibility** that Judge Latham might believe that a Rule 9024 and/or Rule 60 motion would be needed to set aside any such signed Waiver form. Instead, Judge Latham concluded that no such relief was necessary because (1) the subject signed Waiver form was ineffective from the moment it was signed, and (2) Debtor always retained the right to amend his exemptions back to the CCP §704.010 et seq. exemptions he

claimed in his initial Schedules. Judge Latham's 7/21/25 Order found and held that there was (1) no effective Mutual Waiver by either Debtor or his wife, (2) therefore no need to set aside the ineffective purported waiver, and (3) therefore no need for Judge Latham to decide whether to grant any relief under FRBP Rule 9024 and/or FRCP Rule 60(b).

On page 12 of his Brief, Appellant notes that the "Trial Court" (Judge Latham) "...overruled the homestead exemption opposition and allowed the exemption, finding that Rule 60 did not apply.". That statement is accurate but, to be more informative, Judge Latham's 7/21/25 Order (which is the root of this appeal), at footnote 6, stated:

"In *In re Gomez*, the Eastern District held that **effective** waivers are binding absent Rule 60(b) relief. 520 B.R. at 556-57. And at the 6/30/25 hearing, Creditor Mora argued a Rule 60 motion was necessary in the instant case. **But unlike in Gomez, Debtor's spousal waiver was of no effect. So the court need not reach that issue here.**". (emphasis added)

At about the middle of page 4 of Judge Latham's 7/21/25 Order after the subject 6/20/25 hearing (1-ER 22), he concluded:

"It appears to the court that Debtor's wife was physically occupying the Ensenada Property at petition. And both Debtor and she intend to occupy that property. (citations) **So Debtor could properly claim the homestead exemption at petition. See CCP §704.710(c).**". (emphasis added)

SUBSECTION 4: THE EFFECTIVENESS OF THE SPOUSAL WAIVER

APPELLEE’S RESPONSE TO APPELLANT’S SECTION ENTITLED “THE EFFECTIVENESS OF THE SPOUSAL WAIVER”.

At pages 12-15 of his Brief, Appellant has a section entitled “THE EFFECTIVENESS OF THE SPOUSAL WAIVER”. In addition to Appellee’s discussions of the subject marital waiver, and its effectiveness, elsewhere herein, Appellee responds to Appellant’s points regarding the effectiveness of such Waiver as follows:

Appellee’s Response Regarding Appellant’s Issue #1: Whether Debtor’s spousal waiver was effective, and Issue #2: “Whether A Spousal Waiver Binds A Debtor.....Absent Relief....Under FRBP 9024/FRCP 60”:

At page 6 of his Brief, Appellant Mora cites *In re Geisenheimer* for the proposition that, in order to be effective, a waiver of the CCP §704.010 et seq. exemptions pursuant to CCP §703.140 et seq. “...must be a written expression of both the filing and non-filing spouses intent to forego the right to claim the exemptions under section §704.010 et seq. of the California Code of Civil Procedure...”. While that appears to be correct, **there is more required for any such waiver to be effective, as discussed below.**

The subject Mutual Waiver form (also referred to as a “Spousal Waiver”) was not effective in part because, at the time Debtor signed it, he was not aware that he had every right in the world to continue to claim, (as he had done since

his initial bankruptcy Schedule C (“Exemptions”) were filed) pursuant to the CCP §704.010 et seq. exemptions, including his homestead exemption.

A hearing was held on 6/30/25, and on 7/21/25 Judge Latham issued an Order finding (1) that neither Debtor nor his wife, for different reasons, had ever had any obligation to waive their entitlement to the CCP §704.010 et seq. exemptions, and (2) that the subject Mutual Waivers of both Debtor and his wife were not effective because neither of them, understandably, knew that Trustee Stadtmueller and the two attorneys had all been wrong – very likely largely because they did not understand at the time of the subject Meeting of Creditors that (1) Debtor’s wife at all times relevant had resided, and still resides, at the home, and (2) that such home is Debtor’s Domicile, which he intends to return to when he is able to do so. (1-ER-23-24)

Judge Latham found that the signings of the subject Mutual Waiver were not intentional relinquishments of a “known right”, an “existing right, benefit or advantage benefit or advantage”, as required by California law cited in such Order, and hereby adopted herein, and was therefore ineffective. (1-ER-23-24)

The record is clear (see Debtor/Appellee’s Bankruptcy Court Declaration for the 6/30/25 hearing which resulted in Judge Latham’s 7/21/25 Order at ER-19-26) to the effect that Debtor/Appellee was advised/instructed by his bankruptcy attorney, Andrew Griffin, to sign the subject Mutual Waiver, and that attorney

Griffin thereafter prepared an amendment changing from the CCP §704.010 et seq. exemptions to the CCP §703.140 et seq. exemptions, and advised/instructed Debtor to sign such as well. (2-ER-143&144)

Because of being so told/advised by those three persons, two being attorneys and one being a Trustee (an understandable figure of authority to Debtor Aguirre – almost a judge in his eyes), and all of whom Mr. Aguirre would understandably believe know what the law is, Debtor/Appellee Aguirre reasonably believed that he no longer was entitled to the homestead exemption which had protected his equity in his home for many years. That reasonable belief was mistaken, and remained mistaken at the time he signed such Waiver, making such Waiver void ab initio.

At pages 6&7 of his Brief, Appellant argues that the subject Waiver was effective because it was a written waiver signed by Debtor Aguirre and his wife, while Debtor was represented by an attorney, and therefore Debtor had to properly seek to withdraw it via FRCP rule 60 and/or FRBP Rule 9024. This somewhat “self-supporting” statement seems to argue that the subject waiver was effective because it was signed and filed while Debtor had counsel. It appears that, at least regarding such Waiver and the Debtor’s change to the CCP §703.140 et seq. exemptions, Debtor did not have effective counsel. Such statement also seems to ignore all the facts and factors surrounding WHY

Debtor signed such Waiver and Amendment, as explained herein and as clearly understood by Judge Latham.

Due to the above-described factual situation, Judge Latham held, in his subject 7/21/25 Order, near the top of 1-ER-24 that:

“So a waiver was not required for him to elect the special exemption scheme; he was always free to choose either. **FN5** Further, Debtor’s non-filing wife had no existing right, benefit, or advantage to waive, making her waiver ineffective. **Since both waivers need to be effective to forego the regular exemptions, the spousal waiver is not binding here.**” (emphasis added).

Appellee’s Response Regarding Appellant’s Issue #2: “Whether A Spousal Waiver Binds A Debtor.....Absent Relief...Under FRBP 9024/FRCP 60”:

Due to the ineffectiveness of both Debtor’s and his wife’s signing of the Waiver form, there was no need to use Rule 9024, Rule 60(b) and/or any other grounds to “set aside” such ineffective document – **under the relevant facts, it was void from the moment it was signed, and thereafter.**

Footnote #5 of Judge Latham’s decision, **referenced at the portion of Judge Latham’s Order quoted about 10 lines above here, and shown at 1-ER-24, is extremely instructive as to the effectiveness of the purported waiver** of either Debtor or his wife, providing in full as follows:

“Moreover, **Debtor’s prerogative to elect the regular homestead may not have been a known right.** Indeed, **both the Trustee and Creditor Mora’s attorney told him he was not allowed a homestead exemption on the Ensenada Property** (ECF Nos. 65, 66, 67 & 68). **His own bankruptcy counsel then advised him to sign the waiver and amend his schedules.** Id. Contrary to the requirements of effective waiver, **Debtor at that time did not think he had the right to take § 704.730 exemptions.**” (italics in original, emphasis added)

Because not just one, but both of the signatures of Debtor and his wife on the Mutual Waiver form were found by Judge Latham to be ineffective on the facts before him, he also found that any hypothetical discussion of whether any motion to “withdraw” such waiver, to the extent and such motion would **ever** be needed in **any** case, was unnecessary, whether involving FRCP Rule 60 or FRBP Rule 9024 or not. Not only was such discussion unnecessary, any decision regarding such was equally unnecessary. Footnote 6 very near the bottom of 1-ER-24 is a portion of Judge Latham’s subject decision, and states:

“But unlike in In Re Gomez, Debtor’s spousal waiver was of no effect. So the court need not reach that issue here.”. (emphasis added)

WHAT JUDGE LATHAM SAID ABOUT BURDEN OF PROOF AND DEBTOR/APPELLEE AGUIRRE’S ENTITLEMENT TO HIS INITIALLY-CLAIMED CCP §704.010 ET SEQ. HOMESTEAD EXEMPTION

At page 3 of his 7/21/25 Order (1-ER-21), Judge Latham held:

“The objecting party must show by a preponderance of the evidence that an exemption should be denied. See FED. R. BANKR. P. 4003(c); *Carter v. Anderson (In re Carter)*, 182 F.3d 1027, 1029, n.3 (9th Cir. 1999); *In re Hammond*, 638 B.R. 427, 432-36 (Bankr. C.D. Cal. 2022); *In re Greenfield*, 289 B.R. 146, 149 (Bankr. S.D. Cal. 2003). “Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not.” *United States v. Arnold & Baker Farms (In re Arnold & Baker Farms)*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994).

And while the burden of proof always remains with the objecting party, if that party can produce evidence to rebut the

presumption of validity, the burden then shifts to the debtor to come forward with "unequivocal evidence" demonstrating that the exemption is proper. *In re Kelley*, 300 B.R. 11, 17 (B.A.P. 9th Cir. 2003) (citing *In re Carter*, 182 F.3d at 1029). "The burden of persuasion, however, always remains with the objecting party." *Id.*

"Creditor Mora apparently does not dispute that Debtor was entitled to the §704.030 (apparent Court error, appears intended to reference CCP §704.730) homestead exemption at petition (see ECF Nos. 61 & 72). For his part, Debtor contends that he was (ECF Nos. 65, 66, 67 & 68). And on the current record, the court agrees." (emphasis added) (Please see Judge Latham's Order at (1-ER-21))

WHAT JUDGE LATHAM SAID ABOUT WHETHER THE SUBJECT WAIVER WAS INTENTIONAL AND EFFECTIVE

In his Order denying Appellant's Objection to Debtor/Appellee Aguirre returning to his CCP §704.010 et seq. exemptions, Judge Latham noted, in footnote 1 at page 2 of his 7/21/25 Order (1-ER-20):

"In his opposition papers, Debtor asserts that both Creditor Mora's attorney and the Trustee told him at a §341 meeting that he could not claim the Ensenada Property as a homestead (ECF Nos. 65, 66, 67 & 68). No one disputes or objects to that." (emphasis added)

In finding that the subject "waiver" was ineffective at all times, Judge Latham held, at pages 5&6 of his 7/21/25 Order (1-ER-23&24):

"Indeed, a married debtor who files an individual bankruptcy may not claim the special bankruptcy exemptions unless 'both spouses effectively waive in writing the right to claim (the regular exemptions) during the period the (bankruptcy) commenced by filing the petition is pending.... CAL. CODE CIV. PROC. § 703.140(a); see also *In re Geisenheimer*, 530 B.R. 747, 750 (Bankr. E.D. Cal. 2015)."

“But ‘[a] waiver is not required from a debtor who is living separate and apart from their spouse as of the date of the petition unless, on the petition date, the debtor and the debtor's spouse shared an ownership interest in property that could be exempted as a homestead under Article 4 of this chapter.’ CAL. CODE CIV. PROC. §703.140(a)(2)(B).” (emphasis added)

“Thus, to waive CCP §703.140(a)(2)'s regular exemptions, three requirements must be met: (1) both the filing and non-filing spouse must waive their respective rights; (2) both waivers must be effective; and (3) the waivers must be in writing. In re Steward, 227 B.R. at 899 (quoting CAL. CODE CIV. PROC. §703.140(a)); see also *In re Gomez*, 530 B.R. at 756-57; *In re Geisenheimer*, 530 B.R. at 750; *In re Moses*, No. 08-40042 TM, 2008 Bankr. LEXIS 2496 at *3 n.3 (Bankr. N.D. Cal. Aug. 20, 2008).”

“Since the waiver here was not effective, it is not binding against Debtor. See CAL. CODE CIV. PROC. §703.140; cf *In re Gomez*, 530 B.R. at 756-57 (finding a spousal waiver binding where it satisfied each §703.140 element). Under California law, waiver is an intentional relinquishment of a known right. *Roesch v. De Mota*, 24 Cal. 2d 563, 572 (1944). A waiver requires: (1) an existing right, benefit, or advantage, (2) knowledge - actual or constructive - of its existence, (3) and an actual intention to relinquish it. *Trujillo v. L.A.*, 276 Cal. App. 2d 333, 343 (1969).” (emphasis added) “The pivotal issue in a waiver claim is the intention of the party who allegedly relinquished the known legal right. *In re Geisenheimer*, 530 B.R. at 750 (citing *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.*, 30 Cal. App. 4th 54, 60 (1994)).”

“Debtor maintains that his 50% interest in the Ensenada Property is his separate property and that he and his wife share no ownership interest in property that could be exempted as a homestead under Article 4 (ECF Nos. 65, 66, 67 & 68). (FN4) So a waiver was not required for him to elect the special exemption scheme; he was always free to choose either. FN5 See CAL. CODE Civ. PROC. §703.140(a)(2)(B). Further, Debtor's non-

filing wife had no existing right, benefit, or advantage to waive, making her waiver ineffective. Since both waivers must be effective to forego the regular exemptions, the spousal waiver is not binding here.” (emphasis added)

The previous paragraph had a FN5 (where shown) stating as follows:

“Moreover, Debtor’s prerogative to elect the regular homestead exemption may not have been a known right. Indeed, both the Trustee and Creditor Mora’s attorney told him he was not allowed a homestead exemption....His own bankruptcy counsel then advised him to sign the waiver and amend his schedules... Contrary to the requirements of effective waiver, Debtor at that time did not think he had the right to take §704.730 exemptions.”. (emphasis added)

WHAT THE BAP SAID ABOUT THE EFFECTIVENESS OF THE SPOUSAL WAIVER

At pages 11&12 of its Memorandum Opinion (please see 1-ER-12&13), the BAP described Judge Latham’s Order and found as follows:

“The bankruptcy court found that the spousal waiver to forego the regular exemptions was ineffective and not binding. Whether there has been a waiver is a question of fact reversible only for clear error. See *Trujillo v. City of L.A.*, 276 Cal. App. 2d 333&343 (1969). Mora argues that the spousal waiver was effective because: (1) it was a written expression of Rodrigo and Jacqueline's intent to forego the right to claim the regular exemptions; (2) they evidenced an intent to be bound by signing it; (3) Rodrigo was represented by counsel, and so he made a fully informed and voluntary waiver; and (4) they chose to file it. Mora argues that the bankruptcy court erred in finding that the spousal waiver was ineffective because it was not required by statute. He mischaracterizes the court's ruling.

First, the court found that Rodrigo did not need a spousal waiver to claim the special exemptions. According to CCP § 703.140(a)(2)(B), a spousal waiver is not required where the

spouses are living separately and do not jointly own a property that could be exempted as a homestead under CCP§ 704. That is exactly the situation presented here. Rodrigo and Jacqueline did not live together on the petition date and she had no ownership interest in the Ensenada Property to claim exempt under CCP §704 in any bankruptcy case. In addition, the court found that Jacqueline's waiver was ineffective because she had no homestead exemption right to waive.

The court also questioned the effectiveness of Rodrigo's waiver because, at the time he signed it, he did not think he had a right to the regular exemptions or the homestead exemption under CCP §704.730 based on what the Chapter 7 Trustee, Mora's attorney, and possibly Rodrigo's own attorney, had told him. In California, the pivotal issue in determining whether a waiver has occurred is the intent of the party making the waiver. A waiver can only occur if the person intended to give up a "known right after knowledge of the facts." Roesch, 24 Cal. 2d 563 at 572. Rodrigo could not give up a right he did not think he had. Further, Rodrigo stated that he thought the spousal waiver had to do with Jacqueline agreeing that he had a 50% interest in the Ensenada Property and that she had no ownership or homestead interest in it. In short, the requisite intent for a knowing waiver was lacking.

An effective spousal waiver under CCP §703.140(a)(2)(A) requires that *both* waivers be effective . On these facts, the bankruptcy court did not clearly err in finding that the spousal waiver was ineffective for purposes of the statute.” (emphasis added)

Appellee’s Additional Response Re Appellant’s Issue #2: Whether A Spousal Waiver Binds Absent Relief.....Under FRBP Rule 9024/FRCP Rule 60

Appellant’s Issue #2 is whether a spousal waiver binds a Debtor and a non-filing spouse absent relief from such waiver under FRBP 9024/FRCP Rule 60.

As noted in the preceding section, no such “relief” was needed in this case because, under the facts of this case, the purported waiver was ineffective at all times – i.e. it was NEVER effective - void ab initio.

At pages 6&7, Appellant argues that Debtor/Appellee Aguirre should have used FRCP Rule 60, available in bankruptcy cases under FRBP Rule 9024, as basis for a motion to set aside the subject Mutual Waiver form. Under its own wording, however, Rule 60 is only used to set aside a final judgment, final order, or final proceeding.

In this case no such relief was needed because, quite simply, there was never any subject final judgment, final order, or final proceeding which Debtor/Appellee desired or needed relief from.

SUBSECTION 5: EQUITABLE ESTOPPEL

Appellee's Response Re Appellant's Issue #3: Whether The Bankruptcy court Erred With Regard To The Doctrine Of Equitable Estoppel

Appellant's **Issue #3** was whether Judge Latham "erred with regard to the doctrine of equitable estoppel."

At pages 16-20 of his Brief, Appellant has a section entitled "EQUITABLE ESTOPPEL" Appellee responds to such section as follows:

WHAT JUDGE LATHAM SAID ABOUT EQUITABLE ESTOPPEL

At pages 7 of his Order (1-ER-25), Judge Latham notes in part as follows re Creditor Mora's "Equitable Estoppel" argument:

"Creditor Mora fails to show equitable estoppel by a preponderance of the evidence.... So it cannot be said that he always intended to elect the §704 exemption scheme. And even if it could be, Creditor Mora fails to demonstrate any cognizable detrimental reliance.". (Emphasis added)

SOME ADDITIONAL POINTS BY APPELLEE AGUIRRE IN RESPONSE TO APPELLANT'S SECTION ENTITLED "EQUITABLE ESTOPPEL"

On pages 16-20 of his Brief, Appellant Mora maintains that he is entitled to relief from Judge Latham's finding of fact and decision based on the Doctrine of Equitable Estoppel.

Prior to the subject 6/30/25 hearing which resulted in the 7/21/25 Order which Appellant Mora appealed to the BAP, Appellant filed a Memorandum (2-ER-176-181) in which he maintained at 2-ER-178 that the 5 required elements for Equitable Estoppel are: (A) a representation or concealment of material facts; (B) made with knowledge, actual or virtual, of the facts; (C) to a party ignorant, actually and permissibly, of the truth; (D) with the intention, actual or virtual, that the ignorant party act on it; and (E) that party was induced to act on it.". Near the bottom of page 16 of his Opening Brief herein, Appellant Mora cited such 5 elements. **In his 7/21/25 Order** (1-ER-19-26), at 1-ER-24, **Judge Latham recited the same 5 elements, and then proceeded to analyze what he viewed at that time as the facts in this case in light of such 5 elements and all applicable law. Judge Latham determined that Creditor Mora (now Appellant Mora) failed to establish that each of the subject 5 required elements had been met.**

"The doctrine of equitable estoppel must be applied strictly and established in every particular" (please see *Transp. Clearing-Bay Area v. Simmonds* 226 Cal. App. 2nd, 405, 427-428 (1964))

Element A of Equitable Estoppel With regard to the “representation or concealment of a material fact” requirement of Element A, Appellant Mora at page 16 of his Brief argues that Debtor signing and filing the subject Spousal Waiver and changing from the CCP §704 et seq. exemptions to the CCP §703 et seq. exemptions somehow became “a representation or concealment of material facts”. He does not indicate what was represented and/or what was concealed. While Debtor may have signed a Mutual Waiver and changed his exemptions at a time when he had (1) been told at a §341(a) Meeting of Creditors by Appellant’s attorney, and by Chapter 7 Trustee Stadtmueller, that he was no longer entitled to his homestead exemption, and (2) apparently advised by his own attorney, Andrew Griffin, shortly after such Meeting, that he needed to sign a Mutual Waiver and amend his exemptions to CCP §703 et seq., he had no idea at that time that he was, in fact, entitled under applicable law described by Judge Latham in his decision (1) to continue use of the CCP §704.010 et seq. exemptions, and (2) to decline to sign any Mutual Waiver. Also, Debtor/Appellee never made any representation to Appellant Mora or his attorney that he would not, once he learned the truth and the applicable law, (1) return to the CCP §704.010 et seq. exemptions, and/or (2) disregard any such Waiver as ineffective, non-binding and/or unenforceable.

As noted by the California Supreme Court, “Accordingly, the trustee was required to prove some misrepresentation or concealment of a material fact.”. Please see *Vu v. Prudential Prop. & Cas. Ins. Co.*, (2001) 26 Cal 4th 1142 at 1149-52.

Element B of Equitable Estoppel With regard to the “made with knowledge, actual or virtual, of the facts” requirement of Element B, it appears clear that, until Debtor/Appellee Aguirre retained Special Counsel Babcock, he was not aware of the facts that (1) he was not required under applicable law to sign the subject Waiver in order to select whether he wanted to stay with the CCP §704.010 et seq. exemptions or change to the CCP §703.140 et seq. exemptions, and (2) that at all times relevant herein he was, and remains, entitled to his CCP §704.010 et seq. homestead and other exemptions.

Element C of Equitable Estoppel With regard to the “to a party ignorant, actually or permissibly, of the truth” requirement of Element C, Debtor/Appellee Aguirre believes that at all times relevant herein Appellant Mora was well aware of where Debtor/Appellee lived, in addition to Debtor’s residence location being clearly disclosed on his Petition. Also, Appellant Mora and/or his attorney was present at Appellee’s 341(a) Meeting of Creditors where Debtor disclosed that his wife has resided at Debtor’s homesteaded home at all relevant times herein,

including presently. Appellant has not mentioned any other relevant facts which he claims he was ignorant of.

Element D of Equitable Estoppel With regard to the “with the intention, actual or virtual, that the ignorant party act on it” requirement of Element D, Debtor/Appellee Aguirre is unaware of any relevant facts made with knowledge, actual or virtual, of the facts, to any party ignorant, actually or permissibly, of the truth under elements A, B and C. He is likewise unaware of any such fact made “with the intention, actual or virtual, that the ignorant party rely on it”. Appellant has not alleged or offered any such fact.

Element E of Equitable Estoppel With regard to the “and that party was induced to act on it” requirement of Element E, Appellant has not mentioned or described any fact, or even any alleged fact, which would show that he was so induced to act on any such fact. On page 19 of his Brief, Appellant Mora argues he:

“...relied on Debtor’s repeated representations that he was electing exemptions only under the set of exemptions of C.C.P §703.140(b), or he would have raised the issue in his Adversary Proceeding against Mora” (sic, he likely meant “against Aguirre”).

The question is: WHAT “issue” is Appellant Mora referring to? As far as Appellee is concerned, there is no issue under the relevant facts. As noted by Judge Latham in his Order at the middle of 1-ER-21:

“Creditor Mora apparently does not dispute that Debtor was entitled to the § 704.030 (apparent Court error, appears intended to reference CCP §704.730) homestead exemption at petition (see ECF Nos. 61&62)....And on the current record, the court agrees.”.

At page 20 of his Brief herein, Appellant Mora makes his final argument – to the effect that Debtor’s Chapter 7 Trustee, Ronald Stadtmueller, relied on Debtor’s change from the CCP §704 et seq. exemptions to the CCP §703 et seq exemptions.

When such argument was raised by Appellant Mora in the Bankruptcy Court, Judge Latham disposed of it as follows:

“Creditor Mora also argues that the Trustee relied upon the spousal waiver and incurred costs in doing so (ECF Nos. 61 & 62). But the trustee has not objected. Any estate funds the trustee expended pursuing Ensenada Property liquidation were necessarily distinct from creditor Mora’s supposed reliance.”. See footnote 6 at the bottom of page 7 of Judge Latham’s Order (1-ER-24)

Debtor/Appellee and his Special Counsel believe that Trustee Stadtmueller now recognizes that at all times relevant herein Debtor/Appellee has been entitled, and remains entitled, to his initially-claimed CCP §704.010 et seq. homestead exemption, and never had any obligation to sign any Spousal Waiver.

Trustee Stadtmueller may realize that his comments/directives/opinions voiced at Debtor’s 341(a) meeting were incorrect and contributed directly to Debtor changing his exemptions to the CCP §703.140 et seq. group. Any such comments/directives/opinions were certainly made unintentionally in error, and

quite possibly because the Trustee was not aware at that time (1) that Debtor's wife and two of their children were at all times relevant, living in the Debtor's home (and remain there), (2) that Debtor at all times herein regarded his subject prior residence as his domicile, and intended at all times relevant, and still intends, to return to such domicile as soon as possible, and (3) that in or about 2005 Debtor/Appellee Mora recorded a homestead declaration at the San Diego County Recorder's office to protect his equity in such property. (see 2-ER-144)

On 4/24/26, Trustee Stadtmueller filed a "Chapter 7 Trustee's Report of No Distribution – No Funds" in Debtor Aguirre's still-open Chapter 7 bankruptcy case #23-03639-CL7, signaling that at this time he does not expect that Debtor has any non-exempt assets which the Trustee could liquidate for the benefit of the Debtor's unsecured creditors.

WHAT THE BAP SAID ABOUT EQUITABLE ESTOPPEL

At pages 13-17 of its Memorandum Opinion (1-ER-14-18), the BAP included had a lengthy analysis of how Judge Latham handled the "Equitable Estoppel" arguments raised by Creditor/Appellant Mora, and concluded such analysis and its Memorandum Opinion as follows: "The bankruptcy court did not abuse its discretion by not applying equitable estoppel. CONCLUSION For the reasons stated above, we AFFIRM."

**SOME ADDITIONAL POINTS BY APPELLEE AGUIRRE IN
RESPONSE TO APPELLANT MORA'S BRIEF**

In his Brief Appellant does not challenge any of Judge Latham's or the BAP's particular findings, statements, descriptions of facts, determinations of facts, and/or references to relevant facts contained in or referenced in Judge Latham's subject Order or the BAP Memorandum Opinion. Also, Appellant does not challenge any of Judge Latham's or the BAP'S legal points in such Order or Opinion, except in a very vague and summary manner, with no specific legal errors pointed out. Under these circumstances, Debtor/Appellee believes that this Court should strongly consider, and rely upon to the extent allowed under applicable law, all findings, statements, descriptions and determination of facts, and references to relevant facts and relevant legal points contained in Judge Latham's 7/21/25 Order and the BAP's 4/2/26 Memorandum.

CONCLUSION

Appellee's Response to Appellant's Conclusion

At page 21 of his Brief herein, Appellant's "Conclusion" states in full:
"Appellant Mario Montes Mora requests the Court to reverse the Order
overruling the objection to the homestead exemption, and for such other and
further relief as this Court deems proper."

This is a very understandable request, but it is in no way a conclusion of any
grounds or argument why Appellant Mora is entitled to any such relief, or why
Appellee Aguirre should lose the homestead exemption (1) he was entitled to,
appropriately recorded, and had for many years prior to the filing of his
bankruptcy case, (2) he was entitled to and properly selected in his Schedules
initially filed in his Chapter 7 case, and (3) he is entitled to and still has at this
time due, in part, to the ineffectiveness of the subject Mutual Waiver, and to the
fact that there are no sustainable equitable estoppel grounds to take away such
exemption.

Appellee's Conclusion

It appears to be conceded by Appellant Mora that Debtor/Appellee Aguirre
had a valid homestead exemption protecting his home at the time of the
11/21/23 filing of Debtor's subject Chapter 7 case. Although Debtor Aguirre
did sign a written Mutual Waiver after hearing the subject incorrect statements

from Appellant’s attorney and the Chapter 7 Trustee, and after apparently receiving incorrect advice from his own attorney, Judge Latham made it very clear in his findings and written decision that such signing was not an “...intentional relinquishment of a known right” because at the moment of such signing, Debtor Aguirre understandably believed such attorneys and Trustee were correct, and therefore his exemption was not a “known right” at that moment. The BAP properly and overwhelmingly approved of and supported Judge Latham’s Order in its Memorandum Opinion, and this Court should do likewise.

[illegible]

CERTIFICATE OF COMPLIANCE

Federal Rule Of Bankruptcy Procedure 8015(7)

Pursuant to FRBP 8015(a)(7), the undersigned certifies that Appellee's Opening Brief complies with the typeface and word volume limitation set forth in FRAP 32(a), 32(f) and Cir. Rule 32-1, and that such Brief contains 11,554 words as counted by the computer program used to prepare such Brief.

STATEMENT OF RELATED CASES

The undersigned certifies that the following are known related cases and appeals:

In Re Aguirre, the pending appeal to this Court of the BAP Panel's affirmation of the Bankruptcy Court's dismissal of Appellant's Third Amended Complaint re discharge and/or dischargeability in adversary proceeding No. 24-90014-CL, being BAP case #SC-25-1005, and case #25-7614 currently before this Court.

Dated: Sept. 16, 2026

Law Office of Bruce R. Babcock

/s/ Bruce Babcock

Bruce R. Babcock, Esq.

brbab@hotmail.com

Special Counsel for Appellee Aguirre

CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of 18 years, and not a party to or interested in the above-entitled matter. My business address is 1835 Sunset Cliffs Blvd., Ste. 101, San Diego, CA, 92107. On September 16, 2026 I caused the following documents to be served as follows: APPELLEE'S RESPONSIVE BRIEF TO THE APPEAL OF CREDITOR MARIO MORA RE APPELLEE'S RETURN TO HIS CCP 704.010 ET SEQ. HOMESTEAD AND OTHER EXEMPTIONS by:

() MAIL: by placing a true copies of the document(s) in a sealed envelope(s) for collection and mailing in the outgoing mail in my office for deposit in the United States mail, addressed to Law office of Douglas Jaffe, Attn: Douglas Jaffe, Esq., at 501 West Broadway, Ste. 800, San Diego, CA 92101. I am readily familiar with the business practice at my place of business for collection and processing of outgoing mail with the United States Postal Service. On the same day that the outgoing mail is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

(X) ELECTRONICALLY: Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

(X) VIA EMAIL: By emailing a copy thereof to attorney Douglas Jaffe at dougjaffeelaw@gmail.com

Executed on September 16, 2026, at San Diego, California.

/s/ Bruce Babcock
Bruce R. Babcock, Esq.

ADDENDUM OF STATUTORY AUTHORITIES

The following authorities are arranged in the order shown on Appellee's list of Statutory and Rule Authorities at page 7 of Appellee's Brief above.

CCP §703.140 et seq.

including community property and separate property of the spouse, whether or not such property is subject to enforcement of the money judgment.

(Added by Stats. 1983, Ch. 155, Sec. 15. Effective June 30, 1983. Operative July 1, 1983, by Sec. 32 of Ch. 155.)

703.130. Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

(Amended by Stats. 2009, Ch. 500, Sec. 14. (AB 1059) Effective January 1, 2010.)

CCP 703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If spouses are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) (A) If the petition is filed individually, and not jointly, for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(B) Notwithstanding subparagraph (A), a waiver is not required from a debtor who is living separate and apart from their spouse as of the date the petition commencing the case under Title 11 of the United States Code is filed, unless, on the petition date, the debtor and the debtor's spouse shared an ownership interest in property that could be exempted as a homestead under Article 4 of this chapter.

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed twenty-nine thousand two hundred seventy-five dollars (\$29,275) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence.

(2) The debtor's interest, not to exceed seven thousand five hundred dollars (\$7,500) in value, in one or more motor vehicles.

(3) The debtor's interest, not to exceed seven hundred twenty-five dollars (\$725) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand seven hundred fifty dollars (\$1,750) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed one thousand five hundred fifty dollars (\$1,550) in value, plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed eight thousand seven hundred twenty-five dollars (\$8,725) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

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(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed fifteen thousand six hundred fifty dollars (\$15,650) in value, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor, the debtor's spouse, or a dependent of the debtor, including vehicles converted for use by the debtor, the debtor's spouse, or a dependent of the debtor, who has a disability. Conversion of a vehicle for use by a person who has a disability includes altering the interior, installing steering, a wheelchair lift, or motorized steps, or modifying the operation of the vehicle.

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

(F) The aggregate interest, not to exceed seven thousand five hundred dollars (\$7,500), in vacation credits or accrued, or unused, vacation pay, sick leave, family leave, or wages, as defined in Section 200 of the Labor Code.

(11) The debtor's right to receive, or property that is traceable to, any of the following:

(A) An award under a crime victim's reparation law.

(B) A payment under a settlement agreement arising out of or regarding the debtor's employment, to the extent reasonably necessary for the support of the debtor, the debtor's spouse, or a dependent of the debtor.

(C) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a spouse or dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment, not to exceed twenty-nine thousand two hundred seventy-five dollars (\$29,275) on account of personal bodily injury of the debtor, the debtor's spouse, or an individual of whom the debtor is a dependent.

(F) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a spouse or dependent, to the extent reasonably necessary for the support of the debtor and the debtor's spouse or a dependent of the debtor.

(12) Money held in an account owned by the judgment debtor and established pursuant to the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code), subject to the following limits:

(A) The amount exempted for contributions to an account during the 365-day period prior to the date of filing of the debtor's petition for bankruptcy, in the aggregate during this period, shall not exceed the amount of the

(B) The amount exempted for contributions to an account during the period commencing 730 days prior to and ending 366 days prior to the date of filing of the debtor's petition for bankruptcy, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of the filing of the debtor's petition for bankruptcy.

(C) For the purposes of this paragraph, "account" includes all accounts having the same beneficiary.

(D) This paragraph is not subject to the requirements of Section 703.150.

(c) In a case under Title 11 of the United States Code, the value of the property claimed as exempt and the debtor's exemptions provided by this chapter with respect to such property shall be determined as of the date the bankruptcy petition is filed. In a case where the debtor's equity in a residence is less than or equal to the amount of the debtor's allowed homestead exemption as of the date the bankruptcy petition is filed, any appreciation in the value of the debtor's interest in the property during the pendency of the case is exempt.

(Amended by Stats. 2022, Ch. 716, Sec. 2.5. (SB 1099) Effective January 1, 2023.)

703.150. (a) On April 1, 2004, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in subdivision (b) of Section 703.140 in effect immediately before that date shall be adjusted as provided in subdivision (d).

(b) On April 1, 2007, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in Article 3 (commencing with Section 704.010) in effect immediately before that date shall be adjusted as provided in subdivision (d).

(c) On April 1, 2022, and at each three-year interval ending on April 1 thereafter, the dollar amount set forth in paragraph (7) of subdivision (b) of Section 699.730 in effect immediately before that date shall be adjusted as provided in subdivision (d).

(d) The Judicial Council shall determine the amount of the adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, for the most recent three-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars (\$25).

(e) Beginning April 1, 2004, the Judicial Council shall publish a list of the current dollar amounts of exemptions provided in subdivision (b) of Section 703.140 and in Article 3 (commencing with Section 704.010), and the dollar amount set forth in paragraph (7) of subdivision (b) of Section 699.730, together with the date of the next scheduled adjustment.

(f) Adjustments made under subdivision (a) do not apply with respect to cases commenced before the date of the adjustment, subject to any contrary rule applicable under the federal Bankruptcy Code. The applicability of adjustments made under subdivisions (b), (c), and (d) is governed by Section 703.050.

(Amended by Stats. 2024, Ch. 80, Sec. 23. (SB 1525) Effective January 1, 2025.)

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judgment debtor has a spouse and dependents or family, all property of such spouse and dependents or family, including community property and separate property of the spouse, whether or not such property is subject to enforcement of the money judgment.

(Added by Stats. 1983, Ch. 155, Sec. 15. Effective June 30, 1983. Operative July 1, 1983, by Sec. 32 of Ch. 155.)

703.130. Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

(Amended by Stats. 2009, Ch. 500, Sec. 14. (AB 1059) Effective January 1, 2010.)

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If spouses are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) (A) If the petition is filed individually, and not jointly, for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(B) Notwithstanding subparagraph (A), a waiver is not required from a debtor who is living separate and apart from their spouse as of the date the petition commencing the case under Title 11 of the United States Code is filed, unless, on the petition date, the debtor and the debtor's spouse shared an ownership interest in property that could be exempted as a homestead under Article 4 of this chapter.

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed twenty-nine thousand two hundred seventy-five dollars (\$29,275) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence.

(2) The debtor's interest, not to exceed seven thousand five hundred dollars (\$7,500) in value, in one or more motor vehicles.

(3) The debtor's interest, not to exceed seven hundred twenty-five dollars (\$725) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand seven hundred fifty dollars (\$1,750) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed one thousand five hundred fifty dollars (\$1,550) in value, plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed eight thousand seven hundred twenty-five dollars (\$8,725) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

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judgment debtor has a spouse and dependents or family, all property of such spouse and dependents or family, including community property and separate property of the spouse, whether or not such property is subject to enforcement of the money judgment.

(Added by Stats. 1983, Ch. 155, Sec. 15. Effective June 30, 1983. Operative July 1, 1983, by Sec. 32 of Ch. 155.)

703.130. Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

(Amended by Stats. 2009, Ch. 500, Sec. 14. (AB 1059) Effective January 1, 2010.)

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If spouses are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) (A) If the petition is filed individually, and not jointly, for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(B) Notwithstanding subparagraph (A), a waiver is not required from a debtor who is living separate and apart from their spouse as of the date the petition commencing the case under Title 11 of the United States Code is filed, unless, on the petition date, the debtor and the debtor's spouse shared an ownership interest in property that could be exempted as a homestead under Article 4 of this chapter.

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed twenty-nine thousand two hundred seventy-five dollars (\$29,275) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence.

(2) The debtor's interest, not to exceed seven thousand five hundred dollars (\$7,500) in value, in one or more motor vehicles.

(3) The debtor's interest, not to exceed seven hundred twenty-five dollars (\$725) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand seven hundred fifty dollars (\$1,750) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed one thousand five hundred fifty dollars (\$1,550) in value, plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed eight thousand seven hundred twenty-five dollars (\$8,725) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

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(8) The debtor's aggregate interest, not to exceed fifteen thousand six hundred fifty dollars (\$15,650) in value, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor, the debtor's spouse, or a dependent of the debtor, including vehicles converted for use by the debtor, the debtor's spouse, or a dependent of the debtor, who has a disability. Conversion of a vehicle for use by a person who has a disability includes altering the interior, installing steering, a wheelchair lift, or motorized steps, or modifying the operation of the vehicle.

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

(F) The aggregate interest, not to exceed seven thousand five hundred dollars (\$7,500), in vacation credits or accrued, or unused, vacation pay, sick leave, family leave, or wages, as defined in Section 200 of the Labor Code.

(11) The debtor's right to receive, or property that is traceable to, any of the following:

(A) An award under a crime victim's reparation law.

(B) A payment under a settlement agreement arising out of or regarding the debtor's employment, to the extent reasonably necessary for the support of the debtor, the debtor's spouse, or a dependent of the debtor.

(C) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a spouse or dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment, not to exceed twenty-nine thousand two hundred seventy-five dollars (\$29,275) on account of personal bodily injury of the debtor, the debtor's spouse, or an individual of whom the debtor is a dependent.

(F) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a spouse or dependent, to the extent reasonably necessary for the support of the debtor and the debtor's spouse or a dependent of the debtor.

(12) Money held in an account owned by the judgment debtor and established pursuant to the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code), subject to the following limits:

(A) The amount exempted for contributions to an account during the 365-day period prior to the date of filing of the debtor's petition for bankruptcy, in the aggregate during this period, shall not exceed the amount of the

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annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of the filing of the debtor's petition for bankruptcy.

(B) The amount exempted for contributions to an account during the period commencing 730 days prior to and ending 366 days prior to the date of filing of the debtor's petition for bankruptcy, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of the filing of the debtor's petition for bankruptcy.

(C) For the purposes of this paragraph, "account" includes all accounts having the same beneficiary.

(D) This paragraph is not subject to the requirements of Section 703.150.

(c) In a case under Title 11 of the United States Code, the value of the property claimed as exempt and the debtor's exemptions provided by this chapter with respect to such property shall be determined as of the date the bankruptcy petition is filed. In a case where the debtor's equity in a residence is less than or equal to the amount of the debtor's allowed homestead exemption as of the date the bankruptcy petition is filed, any appreciation in the value of the debtor's interest in the property during the pendency of the case is exempt.

(Amended by Stats. 2022, Ch. 716, Sec. 2.5. (SB 1099) Effective January 1, 2023.)

703.150. (a) On April 1, 2004, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in subdivision (b) of Section 703.140 in effect immediately before that date shall be adjusted as provided in subdivision (d).

(b) On April 1, 2007, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in Article 3 (commencing with Section 704.010) in effect immediately before that date shall be adjusted as provided in subdivision (d).

(c) On April 1, 2022, and at each three-year interval ending on April 1 thereafter, the dollar amount set forth in paragraph (7) of subdivision (b) of Section 699.730 in effect immediately before that date shall be adjusted as provided in subdivision (d).

(d) The Judicial Council shall determine the amount of the adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, for the most recent three-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars (\$25).

(e) Beginning April 1, 2004, the Judicial Council shall publish a list of the current dollar amounts of exemptions provided in subdivision (b) of Section 703.140 and in Article 3 (commencing with Section 704.010), and the dollar amount set forth in paragraph (7) of subdivision (b) of Section 699.730, together with the date of the next scheduled adjustment.

(f) Adjustments made under subdivision (a) do not apply with respect to cases commenced before the date of the adjustment, subject to any contrary rule applicable under the federal Bankruptcy Code. The applicability of adjustments made under subdivisions (b), (c), and (d) is governed by Section 703.050.

(Amended by Stats. 2024, Ch. 80, Sec. 23. (SB 1525) Effective January 1, 2025.)

CCP §704.010 et seq. (§704.010-704.235)

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[Up^](#) [Add To My Favorites](#)**CODE OF CIVIL PROCEDURE - CCP****PART 2. OF CIVIL ACTIONS [307 - 1062.34]** (Part 2 enacted 1872.)**TITLE 9. ENFORCEMENT OF JUDGMENTS [680.010 - 724.260]** (Title 9 repealed and added by Stats. 1982, Ch. 1364, Sec. 2.)**DIVISION 2. ENFORCEMENT OF MONEY JUDGMENTS [695.010 - 709.030]** (Division 2 added by Stats. 1982, Ch. 1364, Sec. 2.)**CHAPTER 4. Exemptions [703.010 - 704.995]** (Chapter 4 added by Stats. 1982, Ch. 1364, Sec. 2.)**ARTICLE 3. Exempt Property [704.010 - 704.235]** (Article 3 added by Stats. 1982, Ch. 1364, Sec. 2.)

CCP 704.010. (a) Any combination of the following is exempt in the amount of seven thousand five hundred dollars (\$7,500):

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of seven thousand five hundred dollars (\$7,500) without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

(Amended by Stats. 2022, Ch. 716, Sec. 3. (SB 1099) Effective January 1, 2023.)

704.020. (a) Household furnishings, appliances, provisions, wearing apparel, and other personal effects are exempt in the following cases:

- (1) If ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence.
- (2) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if ordinarily and reasonably necessary to, and personally used or procured for use by, the spouse and members of the spouse's family at the spouse's principal place of residence.

(b) In determining whether an item of property is "ordinarily and reasonably necessary" under subdivision (a), the court shall take into account both of the following:

- (1) The extent to which the particular type of item is ordinarily found in a household.
- (2) Whether the particular item has extraordinary value as compared to the value of items of the same type found in other households.

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(c) If an item of property for which an exemption is claimed pursuant to this section is an item of the type ordinarily found in a household but is determined not to be exempt because the item has extraordinary value as compared to the value of items of the same type found in other households, the proceeds obtained at an execution sale of the item are exempt in the amount determined by the court to be a reasonable amount sufficient to purchase a replacement of ordinary value if the court determines that a replacement is reasonably necessary. Proceeds exempt under this subdivision are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor.

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

704.030. Material that in good faith is about to be applied to the repair or improvement of a residence is exempt if the equity in the material does not exceed three thousand five hundred dollars (\$3,500) in the following cases:

(a) If purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if purchased in good faith for use in the repair or improvement of the spouse's principal place of residence.

(Amended by Stats. 2020, Ch. 81, Sec. 3. (SB 898) Effective January 1, 2021.)

704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed eight thousand seven hundred twenty-five dollars (\$8,725).

(Amended by Stats. 2020, Ch. 81, Sec. 4. (SB 898) Effective January 1, 2021.)

704.050. (a) Health aids reasonably necessary to enable the judgment debtor or the spouse or a dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.

(b) Health aids described in subdivision (a) include vehicles converted for use by the debtor, the debtor's spouse, or a dependent of the debtor, who has a disability. Conversion of a vehicle for use by a person who has a disability includes altering the interior, installing steering, a wheelchair lift, or motorized steps, or modifying the operation of the vehicle.

(Amended by Stats. 2022, Ch. 716, Sec. 4. (SB 1099) Effective January 1, 2023.)

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) Eight thousand seven hundred twenty-five dollars (\$8,725), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) Eight thousand seven hundred twenty-five dollars (\$8,725), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

(d) Notwithstanding subdivisions (a) and (b):

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(1) The amount of the exemption for a commercial motor vehicle under paragraph (1) or (2) of subdivision (a) is limited to four thousand eight hundred fifty dollars (\$4,850).

(2) The amount of the exemption for a commercial motor vehicle under paragraph (3) of subdivision (a) is limited to twice the amount of the exemption provided in paragraph (1) of this subdivision.

(Amended by Stats. 2021, Ch. 124, Sec. 11. (AB 938) Effective January 1, 2022.)

704.070. (a) As used in this section:

(1) "Earnings withholding order" means an earnings withholding order under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(2) "Paid earnings" means earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy. For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.

(3) "Earnings assignment order for support" means an earnings assignment order for support as defined in Section 706.011.

(b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are exempt in the following amounts:

(1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or an earnings assignment order for support.

(2) Disposable earnings that would otherwise not be subject to levy under Section 706.050 that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support.

(Amended by Stats. 2019, Ch. 552, Sec. 7. (SB 616) Effective January 1, 2020.)

704.080. (a) For the purposes of this section:

(1) "Deposit account" means a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent.

(2) "Social security benefits" means payments authorized by the Social Security Administration for regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits. "Public benefits" means aid payments authorized pursuant to subdivision (a) of Section 11450 of the Welfare and Institutions Code, payments for supportive services as described in Section 11323.2 of the Welfare and Institutions Code, and general assistance payments made pursuant to Section 17000.5 of the Welfare and Institutions Code.

(b) A deposit account is exempt without making a claim in the following amount:

(1) One thousand seven hundred fifty dollars (\$1,750) where one depositor is the designated payee of the directly deposited public benefits payments.

(2) Three thousand five hundred dollars (\$3,500) where one depositor is the designated payee of directly deposited social security payments.

(3) Two thousand six hundred dollars (\$2,600) where two or more depositors are the designated payees of the directly deposited public benefits payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exemption under paragraph (1) applies.

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(4) Five thousand two hundred fifty dollars (\$5,250) where two or more depositors are the designated payees of directly deposited social security payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exemption under paragraph (2) applies.

(c) The amount of a deposit account that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments of public benefits or social security benefits.

(d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3, when a deposit account is levied upon or otherwise sought to be subjected to the enforcement of a money judgment, the financial institution that holds the deposit account shall either place the amount that exceeds the exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of that amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating (1) that the deposit account is one in which payments of public benefits or social security benefits are directly deposited by the government or its agent and (2) the balance of the deposit account that exceeds the exemption provided by subdivision (b). Promptly upon receipt of the notice, the levying officer shall serve the notice on the judgment creditor. Service shall be made personally or by mail.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves the notice on the judgment creditor under subdivision (d), a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and file a copy with the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the "notice of opposition to the claim of exemption" in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not file the affidavit with the levying officer and give notice of hearing pursuant to Section 703.570 within the time provided in paragraph (1), the levying officer shall release the deposit account and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted and no counteraffidavit is required.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c) in whole or in part and shall make an appropriate order for its prompt disposition. No findings are required in a proceeding under this subdivision.

(6) Upon determining the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 703.510). If the judgment debtor also opposes the judgment creditor's affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 703.510).

(Amended by Stats. 2020, Ch. 81, Sec. 6. (SB 898) Effective January 1, 2021.)

704.090. (a) The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim

in the amount of one thousand seven hundred fifty dollars (\$1,750). If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

(b) Notwithstanding subdivision (a), if the judgment is for a restitution fine or order imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative on or before September 28, 1994, or Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 1202.4 of the Penal Code, the funds held in trust for, or to the credit of, a judgment debtor described in subdivision (a) are exempt in the amount of three hundred twenty-five dollars (\$325) without making a claim. The exemption provided in this subdivision is not subject to adjustment under Section 703.150.

(Amended by Stats. 2020, Ch. 81, Sec. 7. (SB 898) Effective January 1, 2021.)

704.100. (a) Unmatured life insurance policies (including endowment and annuity policies), but not the loan value of such policies, are exempt without making a claim.

(b) The aggregate loan value of unmatured life insurance policies (including endowment and annuity policies) is subject to the enforcement of a money judgment but is exempt in the amount of thirteen thousand nine hundred seventy-five dollars (\$13,975). If the judgment debtor is married, each spouse is entitled to a separate exemption under this subdivision, and the exemptions of the spouses may be combined, regardless of whether the policies belong to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment debtor under the judgment. The exemption provided by this subdivision shall be first applied to policies other than the policy before the court and then, if the exemption is not exhausted, to the policy before the court.

(c) Benefits from matured life insurance policies (including endowment and annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(Amended by Stats. 2020, Ch. 81, Sec. 8. (SB 898) Effective January 1, 2021.)

704.105. Money held in an account owned by the judgment debtor and established pursuant to the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code) is exempt without making a claim, subject to the following limitations:

(a) The amount exempted for contributions to an account during the 365-day period prior to the date of entry of a money judgment, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of entry of the money judgment.

(b) The amount exempted for contributions to an account during the period commencing 730 days prior to and ending 366 days prior to the date of entry of a money judgment, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, in effect at the time of entry of the money judgment.

(c) For the purposes of this section, "account" includes all accounts having the same beneficiary.

(d) This section is not subject to the requirements of Section 703.150.

(Amended by Stats. 2022, Ch. 25, Sec. 2. (SB 956) Effective January 1, 2023.)

704.110. (a) As used in this section:

(1) "Public entity" means the state, or a city, city and county, county, or other political subdivision of the state, or a public trust, public corporation, or public board, or the governing body of any of them, but does not include the United States except where expressly so provided.

(2) "Public retirement benefit" means a pension or an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public retirement system.

(3) "Public retirement system" means a system established pursuant to statute by a public entity for retirement, annuity, or pension purposes or payment of disability or death benefits.

(b) All amounts held, controlled, or in process of distribution by a public entity derived from contributions by the public entity or by an officer or employee of the public entity for public retirement benefit purposes, and all rights and benefits accrued or accruing to any person under a public retirement system, are exempt without making a claim.

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(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child, family, or spousal support against that person:

(1) Except as provided in paragraphs (2) and (3), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to an earnings assignment order for support as defined in Section 706.011, or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from the payment being made to the judgment debtor, for each payment made pursuant to an earnings assignment order under this paragraph, an amount reflecting the actual cost of administration caused by the assignment order of up to two dollars (\$2) for each payment.

(3) If the intercept procedure provided for in Section 11357 of the Welfare and Institutions Code is used for benefits that are payable periodically, the amount to be withheld shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(4) If the amount sought to be applied to the satisfaction of the judgment is payable as a lump-sum distribution, the amount payable is subject to the intercept procedure provided in Section 11357 of the Welfare and Institutions Code or any other applicable enforcement procedure.

(d) All amounts received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and interest thereon from the United States or a public entity or from a public retirement system are exempt.

(Amended by Stats. 1996, Ch. 927, Sec. 1.5. Effective January 1, 1997.)

704.111. Alimony, support, and separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, are exempt.

(Added by Stats. 2022, Ch. 716, Sec. 5. (SB 1099) Effective January 1, 2023.)

704.113. (a) As used in this chapter, "vacation credits" means vacation credits accumulated by a state employee pursuant to Section 19858.1 of the Government Code or by any other public employee pursuant to any law for the accumulation of vacation credits applicable to the employee.

(b) The aggregate interest, not to exceed seven thousand five hundred dollars (\$7,500), in vacation credits or accrued, or unused, vacation pay, sick leave, or family leave is exempt.

(c) Amounts paid periodically or as a lump sum representing vacation credits are subject to any earnings withholding order served under Chapter 5 (commencing with Section 706.010) or any earnings assignment order for support as defined in Section 706.011 and are exempt to the same extent as earnings of a judgment debtor.

(Amended by Stats. 2022, Ch. 716, Sec. 6. (SB 1099) Effective January 1, 2023.)

704.114. (a) Notwithstanding any other provision of law, service of an earnings assignment order for support, or an order or notice to withhold income for child support on any public entity described in Section 704.110, other than the United States government, creates a lien on all employee contributions in the amount necessary to satisfy a support judgment as determined under Section 695.210 to the extent that the judgment remains enforceable.

(b) The public entity shall comply with any request for a return of employee contributions by an employee named in the order or notice to withhold by delivering the contributions to the clerk of the court in which the support order was awarded or last registered, unless the entity has received a certified copy of an order or administrative notice terminating the earnings assignment order for support.

(c) Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of the receipt of the deposit to the parties and to the local child support agency enforcing any order pursuant to Section 17400 of the Family Code.

(d) Moneys received pursuant to this section are subject to any procedure available to enforce an order for support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the employee.

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(e) A court shall not directly or indirectly condition the issuance, modification or termination of, or condition the terms or conditions of, any order for support upon the making of a request for the return of employee contributions by an employee.

(Amended by Stats. 2000, Ch. 808, Sec. 13. Effective September 28, 2000.)

704.115. (a) As used in this section, "retirement plan" means:

- (1) Private retirement plans, including, but not limited to, union retirement plans.
- (2) Profit-sharing plans designed and used for retirement purposes.
- (3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1986, as amended, including individual retirement accounts qualified under Section 408 or 408A of that code, to the extent the amounts held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under that code.
- (4) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under Sections 403, 414, or 457 of the Internal Revenue Code of 1986, as amended, to the extent the amounts held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under that code and are not otherwise exempt under federal law.

(b) All amounts held, controlled, or in process of distribution by a retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a retirement plan are exempt.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child, family, or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(d) After payment, the amounts described in subdivision (b) and all contributions and interest thereon returned to any member of a retirement plan are exempt.

(e) (1) Notwithstanding subdivisions (b) and (d), except as provided in subdivision (f), the amounts described in paragraphs (3) and (4) of subdivision (a) are exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires.

(2) For personal debt, as defined in subdivision (d) of Section 683.110, the amount necessary to provide for the support of the judgment debtor cannot be, unless otherwise provided by federal law, less than the amount listed in subsection (n) of Section 522 of Title 11 of the United States Code, as adjusted in accordance with subsection (b) of Section 104 of Title 11 of the United States Code. The exempt amount may be aggregated across all retirement plans in the judgment debtor's name. The exempt amount may be reduced to the extent that such value is attributable to any portion of any property the debtor disposed of with the intent to hinder, delay, or defraud a creditor, and that the debtor could not have exempted at the time the debtor so disposed of the property.

(3) In determining the amount to be exempt under this subdivision, the court shall allow the judgment debtor such additional amount as is necessary to pay any federal and state income taxes owed as a result of the application of funds in a retirement plan to the satisfaction of the money judgment.

(f) Where the amounts described in paragraphs (3) and (4) of subdivision (a) are payable periodically, the amount of the periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be

withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law). To the extent a lump-sum distribution from an individual retirement account is treated differently from a periodic distribution under this subdivision, any lump-sum distribution from an account qualified under Section 408A of the Internal Revenue Code shall be treated the same as a lump-sum distribution from an account qualified under Section 408 of the Internal Revenue Code for purposes of determining whether any of that payment may be applied to the satisfaction of a money judgment.

(Amended by Stats. 2024, Ch. 514, Sec. 7. (AB 2837) Effective January 1, 2025.)

704.120. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, amounts held for payment of the following benefits are exempt without making a claim:

- (1) Benefits payable under Division 1 (commencing with Section 100) of the Unemployment Insurance Code.
- (2) Incentives payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.
- (3) Benefits payable under an employer's plan or system to supplement unemployment compensation benefits of the employees generally or for a class or group of employees.
- (4) Unemployment benefits payable by a fraternal organization to its bona fide members.
- (5) Benefits payable by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

(d) During the payment of benefits described in paragraph (1) of subdivision (b) to a judgment debtor under a support judgment, the judgment creditor may, through the appropriate local child support agency, seek to apply the benefit payment to satisfy the judgment as provided by Section 17518 of the Family Code.

(e) During the payment of benefits described in paragraphs (2) to (5), inclusive, of subdivision (b) to a judgment debtor under a support judgment, the judgment creditor may, directly or through the appropriate local child support agency, seek to apply the benefit payments to satisfy the judgment by an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure. If the benefit is payable periodically, the amount to be withheld pursuant to the assignment order or other procedure shall be 25 percent of the amount of each periodic payment or any lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest whole dollar. Otherwise the amount to be withheld shall be the amount the court determines under subdivision (c) of Section 703.070. The paying entity may deduct from each payment made pursuant to an assignment order under this subdivision an amount reflecting the actual cost of administration caused by the assignment order up to two dollars (\$2) for each payment.

(Amended by Stats. 2000, Ch. 808, Sec. 14. Effective September 28, 2000.)

704.130. (a) Before payment, benefits from a disability or health insurance policy or program are exempt without making a claim. After payment, the benefits are exempt.

(b) Subdivision (a) does not apply to benefits that are paid or payable to cover the cost of health care if the judgment creditor is a provider of health care whose claim is the basis on which the benefits are paid or payable.

(c) During the payment of disability benefits described in subdivision (a) to a judgment debtor under a support judgment, the judgment creditor or local child support agency may seek to apply the benefit payments to satisfy the judgment by an earnings assignment order for support, as defined in Section 706.011, or any other applicable enforcement procedure, but the amount to be withheld pursuant to the earnings assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings assignment order for support under Section 706.052.

(Amended by Stats. 2000, Ch. 808, Sec. 15. Effective September 28, 2000.)

704.140. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for personal injury is exempt without making a claim.

(b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

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(c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.

(d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

704.150. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for wrongful death is exempt without making a claim.

(b) Except as provided in subdivision (c), an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is exempt to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Where an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is payable periodically, the amount of such a periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

704.160. (a) Except as provided by Chapter 1 (commencing with Section 4900) of Part 3 of Division 4 of the Labor Code, before payment, a claim for workers' compensation or workers' compensation awarded or adjudged is exempt without making a claim. Except as specified in subdivision (b), after payment, the award is exempt.

(b) Notwithstanding any other provision of law, during the payment of workers' compensation temporary disability benefits described in subdivision (a) to a support judgment debtor, the support judgment creditor may, through the appropriate local child support agency, seek to apply the workers' compensation temporary disability benefit payment to satisfy the support judgment as provided by Section 17404 of the Family Code.

(c) Notwithstanding any other provision of law, during the payment of workers' compensation temporary disability benefits described in subdivision (a) to a support judgment debtor under a support judgment, including a judgment for reimbursement of public assistance, the judgment creditor may, directly or through the appropriate local child support agency, seek to apply the temporary disability benefit payments to satisfy the support judgment by an earnings assignment order for support, as defined in Section 5208 of the Family Code, or any other applicable enforcement procedure. The amount to be withheld pursuant to the earnings assignment order for support or other enforcement procedure shall be 25 percent of the amount of each periodic payment or any lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest dollar. Otherwise, the amount to be withheld shall be the amount the court determines under subdivision (c) of Section 703.070. The paying entity may deduct from each payment made pursuant to an order assigning earnings under this subdivision an amount reflecting the actual cost of administration of this assignment, up to two dollars (\$2) for each payment.

(d) Unless the provision or context otherwise requires, the following definitions govern the construction of this section.

(1) "Judgment debtor" or "support judgment debtor" means a person who is owing a duty of support.

(2) "Judgment creditor" or "support judgment creditor" means the person to whom support has been ordered to be paid.

(3) "Support" refers to an obligation owing on behalf of a child, spouse, or family; or an amount owing pursuant to Section 17402 of the Family Code. It also includes past due support or arrearage when it exists.

(Amended by Stats. 2000, Ch. 808, Sec. 16. Effective September 28, 2000.)

704.170. Before payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or similar aid provided by a charitable organization or a fraternal benefit society as defined in Section 10990 of the Insurance Code, is exempt without making a claim. After payment, the aid is exempt.

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

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704.180. Before payment, relocation benefits for displacement from a dwelling which are to be paid pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (42 U.S.C. Sec. 4601 et seq.), as amended, are exempt without making a claim. After payment, the benefits are exempt.

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

704.190. (a) As used in this section, "institution of higher education" means "institution of higher education" as defined in Section 1141(a) of Title 20 of the United States Code, as amended.

(b) Before payment, financial aid for expenses while attending school provided to a student by an institution of higher education is exempt without making a claim. After payment, the aid is exempt.

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

704.200. (a) As used in this section:

(1) "Cemetery" has the meaning provided by Section 7003 of the Health and Safety Code.

(2) "Family plot" is a plot that satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) "Plot" has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is exempt without making a claim.

(c) Except as provided in subdivision (d), a cemetery plot for the judgment debtor and the spouse of the judgment debtor is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

704.210. Property that is not subject to enforcement of a money judgment is exempt without making a claim.

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

704.220. (a) Money in the judgment debtor's deposit account in an amount equal to or less than the minimum basic standard of adequate care for a family of four for Region 1, established by Section 11452 of the Welfare and Institutions Code and as annually adjusted by the State Department of Social Services pursuant to Section 11453 of the Welfare and Institutions Code, is exempt without making a claim.

(b) (1) Subdivision (a) does not preclude or reduce a judgment debtor's right to any other exemption provided by state or federal law.

(2) If the financial institution holding the judgment debtor's deposit account has actual knowledge that the judgment debtor is entitled to one or more exemptions that the financial institution is required to apply pursuant to federal law or state law other than that set forth in subdivision (a), the following shall apply:

(A) If the sum of the amount of money in the deposit account that would be exempt from levy under the additional exemptions is less than or equal to the amount set forth in subdivision (a), the additional exemptions described in this paragraph shall be considered encompassed within the exemption set forth in subdivision (a) and subdivision (a) shall apply.

(B) If the sum of the amount of money in the deposit account that would be exempt from levy under the additional exemptions is greater than the amount set forth in subdivision (a), subdivision (a) shall not apply and instead money in the deposit account equal to or less than the sum of the additional exemptions is exempt without making a claim.

(c) Subdivision (a) does not apply to money levied upon to satisfy any of the following:

(1) A levy to satisfy a judgment for wages owed, child support, or spousal support. For purposes of this paragraph, "wages owed" includes damages and penalties.

(2) A provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code.

(3) A warrant or notice of levy issued by the state, or any department or agency thereof, for the collection of a liability.

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(d) A levy against a judgment debtor's deposit account shall include a written description of the requirements of this section.

(e) (1) The exemption applies per debtor, not per account.

(2) If a judgment debtor holds an interest in multiple accounts at a single financial institution, the judgment creditor or judgment debtor may file an ex parte application in the superior court in which the judgment was entered for a hearing to establish how and to which account the exemption should be applied. Subject to a service of an order issued in that hearing, if any, the financial institution may determine how and to which account the exemption should be applied. This paragraph does not create a cause of action against a judgment creditor who executes a levy or against a financial institution that complies with a levy pursuant to the court's determination.

(3) If a judgment debtor holds an interest in multiple accounts at two or more financial institutions, the judgment creditor shall, and the judgment debtor may, file an ex parte application in the superior court in which the judgment was entered for a hearing to establish how and to which account the exemption should be applied. Subject to a service of an order issued in that hearing, if any, the financial institutions shall comply with the levy subject to the exemption. This paragraph does not create a cause of action against a judgment creditor who executes a levy or against a financial institution which complies with a levy pursuant to the court's determination.

(4) Notwithstanding paragraph (2), if a judgment debtor holds multiple accounts at a single financial institution, and those accounts cumulatively contain an amount less than or equal to the amount specified in subdivision (a), the financial institution shall protect the full amount in those accounts.

(5) Notwithstanding paragraph (2), if a judgment debtor holds multiple accounts at a single financial institution, and each of those accounts contains an amount less than the amount specified in subdivision (a) but the accounts cumulatively contain an amount greater than the amount specified in subdivision (a), the financial institution shall protect an aggregate amount equal to the amount specified in subdivision (a).

(f) Subdivision (e) of Section 700.140 applies to a financial institution acting under this section.

(g) The Judicial Council shall amend or adopt all forms necessary to implement this section. The forms shall clearly delineate the amount of funds exempt from levy by a financial institution, including funds exempted by this section.

(h) This section shall become operative on September 1, 2020.

(Amended by Stats. 2024, Ch. 514, Sec. 8. (AB 2837) Effective January 1, 2025.)

704.225. Money in a judgment debtor's deposit account that is not otherwise exempt under this chapter is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(Added by Stats. 2019, Ch. 552, Sec. 9. (SB 616) Effective January 1, 2020.)

704.230. Money provided to the judgment debtor by the Federal Emergency Management Agency (FEMA) is exempt without making a claim.

(Added by Stats. 2019, Ch. 552, Sec. 10. (SB 616) Effective January 1, 2020.)

704.235. (a) A one-time lump-sum payment made from a HOPE trust account, as defined in subdivision (a) of Section 18997.51 of the Welfare and Institutions Code, shall be exempt without making a claim, except as provided in subdivision (b).

(b) A one-time lump-sum payment described in subdivision (a) is not exempt from a levy in connection with child support, spousal support, family support, or a criminal restitution.

(c) A financial institution that receives a payment described in subdivision (a) directly from the state shall treat the payment as exempt from levy if it is designated "HOPE trust account payment" or if the payment is otherwise sufficiently identified to inform the financial institution that the payment is a HOPE trust account payment.

(Added by Stats. 2024, Ch. 1010, Sec. 2. (SB 242) Effective January 1, 2025.)

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(c) If an item of property for which an exemption is claimed pursuant to this section is an item of the type ordinarily found in a household but is determined not to be exempt because the item has extraordinary value as compared to the value of items of the same type found in other households, the proceeds obtained at an execution sale of the item are exempt in the amount determined by the court to be a reasonable amount sufficient to purchase a replacement of ordinary value if the court determines that a replacement is reasonably necessary. Proceeds exempt under this subdivision are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor.

(Added by Stats. 1982, Ch. 1364, Sec. 2. Operative July 1, 1983, by Sec. 3 of Ch. 1364.)

704.030. Material that in good faith is about to be applied to the repair or improvement of a residence is exempt if the equity in the material does not exceed three thousand five hundred dollars (\$3,500) in the following cases:

(a) If purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if purchased in good faith for use in the repair or improvement of the spouse's principal place of residence.

(Amended by Stats. 2020, Ch. 81, Sec. 3. (SB 898) Effective January 1, 2021.)

704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed eight thousand seven hundred twenty-five dollars (\$8,725).

(Amended by Stats. 2020, Ch. 81, Sec. 4. (SB 898) Effective January 1, 2021.)

704.050. (a) Health aids reasonably necessary to enable the judgment debtor or the spouse or a dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.

(b) Health aids described in subdivision (a) include vehicles converted for use by the debtor, the debtor's spouse, or a dependent of the debtor, who has a disability. Conversion of a vehicle for use by a person who has a disability includes altering the interior, installing steering, a wheelchair lift, or motorized steps, or modifying the operation of the vehicle.

(Amended by Stats. 2022, Ch. 716, Sec. 4. (SB 1099) Effective January 1, 2023.)

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) Eight thousand seven hundred twenty-five dollars (\$8,725), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) Eight thousand seven hundred twenty-five dollars (\$8,725), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

CCP §704.710



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CODE OF CIVIL PROCEDURE - CCP

PART 2. OF CIVIL ACTIONS [307 - 1062.34] (Part 2 enacted 1872.)

TITLE 9. ENFORCEMENT OF JUDGMENTS [680.010 - 724.260] (Title 9 repealed and added by Stats. 1982, Ch. 1364, Sec. 2.)

DIVISION 2. ENFORCEMENT OF MONEY JUDGMENTS [695.010 - 709.030] (Division 2 added by Stats. 1982, Ch. 1364, Sec. 2.)

CHAPTER 4. Exemptions [703.010 - 704.995] (Chapter 4 added by Stats. 1982, Ch. 1364, Sec. 2.)

ARTICLE 4. Homestead Exemption [704.710 - 704.850] (Article 4 added by Stats. 1982, Ch. 1364, Sec. 2.)

704.710. As used in this article:

(a) "Dwelling" means a place where a person resides and may include but is not limited to the following:

- (1) A house together with the outbuildings and the land upon which they are situated.
- (2) A mobilehome together with the outbuildings and the land upon which they are situated.
- (3) A boat or other waterborne vessel.
- (4) A condominium, as defined in Section 783 of the Civil Code.
- (5) A planned development, as defined in Section 11003 of the Business and Professions Code.
- (6) A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code.
- (7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) "Family unit" means any of the following:

- (1) The judgment debtor and the judgment debtor's spouse if the spouses reside together in the homestead.
- (2) The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead:
 - (A) The minor child or minor grandchild of the judgment debtor or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.
 - (B) The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.
 - (C) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.
 - (D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.

- (3) The judgment debtor's spouse and at least one of the persons listed in paragraph (2) who the judgment debtor's spouse cares for or maintains in the homestead.

(c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

(d) "Spouse" does not include a married person following entry of a judgment decreeing legal separation of the parties, unless such married persons reside together in the same dwelling.

(Amended by Stats. 1983, Ch. 1159, Sec. 11. Operative July 1, 1984, by Sec. 17 of Ch. 1159.)

704.720. (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.

(b) If a homestead is sold under this division or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the proceeds received as compensation for a homestead acquired for public use are exempt in the amount of the homestead exemption provided in Section 704.730. The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt.

(c) If the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt.

(d) If a judgment debtor is not currently residing in the homestead, but his or her separated or former spouse continues to reside in or exercise control over possession of the homestead, that judgment debtor continues to be entitled to an exemption under this article until entry of judgment or other legally enforceable agreement dividing the community property between the judgment debtor and the separated or former spouse, or until a later time period as specified by court order. Nothing in this subdivision shall entitle the judgment debtor to more than one exempt homestead. Notwithstanding subdivision (d) of Section 704.710, for purposes of this article, "spouse" may include a separated or former spouse consistent with this subdivision.

(Amended by Stats. 2007, Ch. 153, Sec. 1. Effective January 1, 2008.)

704.730. (a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, for the most recent one-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars (\$25).

(Amended by Stats. 2024, Ch. 80, Sec. 24. (SB 1525) Effective January 1, 2025.)

704.740. (a) Except as provided in subdivision (b), the interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article and the dwelling exemption shall be determined under this article.

(b) If the dwelling is personal property or is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy:

(1) A court order for sale is not required and the procedures provided in this article relating to the court order for sale do not apply.

(2) An exemption claim shall be made and determined as provided in Article 2 (commencing with Section 703.510).

CCP §704.730

(c) "Homestead" means the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

(d) "Spouse" does not include a married person following entry of a judgment decreeing legal separation of the parties, unless such married persons reside together in the same dwelling.

(Amended by Stats. 1983, Ch. 1159, Sec. 11. Operative July 1, 1984, by Sec. 17 of Ch. 1159.)

704.720. (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.

(b) If a homestead is sold under this division or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the proceeds received as compensation for a homestead acquired for public use are exempt in the amount of the homestead exemption provided in Section 704.730. The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt.

(c) If the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt.

(d) If a judgment debtor is not currently residing in the homestead, but his or her separated or former spouse continues to reside in or exercise control over possession of the homestead, that judgment debtor continues to be entitled to an exemption under this article until entry of judgment or other legally enforceable agreement dividing the community property between the judgment debtor and the separated or former spouse, or until a later time period as specified by court order. Nothing in this subdivision shall entitle the judgment debtor to more than one exempt homestead. Notwithstanding subdivision (d) of Section 704.710, for purposes of this article, "spouse" may include a separated or former spouse consistent with this subdivision.

(Amended by Stats. 2007, Ch. 153, Sec. 1. Effective January 1, 2008.)

CCP 704.730. (a) The amount of the homestead exemption is the greater of the following:

- (1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).
- (2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, for the most recent one-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars (\$25).

(Amended by Stats. 2024, Ch. 80, Sec. 24. (SB 1525) Effective January 1, 2025.)

704.740. (a) Except as provided in subdivision (b), the interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article and the dwelling exemption shall be determined under this article.

(b) If the dwelling is personal property or is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy:

- (1) A court order for sale is not required and the procedures provided in this article relating to the court order for sale do not apply.
- (2) An exemption claim shall be made and determined as provided in Article 2 (commencing with Section 703.510).

FRCP Rule 60

LII > Federal Rules of Civil Procedure > **Rule 60. Relief from a Judgment or Order**

FRCP

Rule 60. Relief from a Judgment or Order

(a) **CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) **GROUND FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) **TIMING AND EFFECT OF THE MOTION.**

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation.

(d) **OTHER POWERS TO GRANT RELIEF.** This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) **BILLS AND WRITS ABOLISHED.** The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

Notes

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivision (a). See [former] Equity Rule 72 (Correction of Clerical Mistakes in Orders and Decrees); Mich.Court Rules Ann. (Searl, 1933) Rule 48, §3; 2 Wash.Rev.Stat. Ann. (Remington, 1932) §464(3); Wyo.Rev.Stat. Ann. (Courtright, 1931) §89–2301(3). For an example of a very liberal provision for the correction of clerical errors and for amendment after judgment, see Va.Code Ann. (Michie, 1936) §§6329, 6333.

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Note to Subdivision (b). Application to the court under this subdivision does not extend the time for taking an appeal, as distinguished from the motion for new trial. This section is based upon Calif.Code Civ.Proc. (Deering, 1937) §473. See also N.Y.C.P.A. (1937) §108; 2 Minn.Stat. (Mason, 1927) §9283.

For the independent action to relieve against mistake, etc., see Dobie, *Federal Procedure*, pages 760–765, compare 639; and Simkins, *Federal Practice*, ch. CXXI (pp. 820–830) and ch. CXXII (pp. 831–834), compare §214.

NOTES OF ADVISORY COMMITTEE ON RULES—1946 AMENDMENT

Subdivision (a). The amendment incorporates the view expressed in *Perlman v. 322 West Seventy-Second Street Co., Inc.* (C.C.A.2d, 1942) 127 F.(2d) 716; 3 *Moore's Federal Practice* (1938) 3276, and further permits correction after docketing, with leave of the appellate court. Some courts have thought that upon the taking of an appeal the district court lost its power to act. See *Schram v. Safety Investment Co.* (E.D.Mich. 1942) 45 F.Supp. 636; also *Miller v. United States* (C.C.A.7th, 1940) 114 F.(2d) 267.

Subdivision (b). When promulgated, the rules contained a number of provisions, including those found in Rule 60(b), describing the practice by a motion to obtain relief from judgments, and these rules, coupled with the reservation in Rule 60(b) of the right to entertain a new action to relieve a party from a judgment, were generally supposed to cover the field. Since the rules have been in force, decisions have been rendered that the use of bills of review, *coram nobis*, or *audita querela*, to obtain relief from final judgments is still proper, and that various remedies of this kind still exist although they are not mentioned in the rules and the practice is not prescribed in the rules. It is obvious that the rules should be complete in this respect and define the practice with respect to any existing rights or remedies to obtain relief from final judgments. For extended discussion of the old common law writs and equitable remedies, the interpretation of Rule 60, and proposals for change, see Moore and Rogers, *Federal Relief from Civil Judgments* (1946) 55 Yale L.J. 623. See also 3 *Moore's Federal Practice* (1938) 3254 *et seq.*; Commentary, *Effect of Rule 60b on Other Methods of Relief From Judgment* (1941) 4 Fed.Rules Serv. 942, 945; *Wallace v. United States* (C.C.A.2d, 1944) 142 F.(2d) 240, cert. den. (1944) 323 U.S. 712.

The reconstruction of Rule 60(b) has for one of its purposes a clarification of this situation. Two types of procedure to obtain relief from judgments are specified in the rules as it is proposed to amend them. One procedure is by motion in the court and in the action in which the judgment was rendered. The other procedure is by a new or independent action to obtain relief from a judgment, which action may or may not be begun in the court which rendered the judgment. Various rules, such as the one dealing with a motion for new trial and for amendment of judgments, Rule 59, one for amended findings, Rule 52, and one for judgment notwithstanding the verdict, Rule 50(b), and including the provisions of Rule 60(b) as amended, prescribe the various types of cases in which the practice by motion is permitted. In each case there is a limit upon the time within which resort to a motion is permitted, and this time limit may not be enlarged under Rule 6(b). If the right to make a motion is lost by the expiration of the time limits fixed in these rules, the only other procedural remedy is by a new or independent action to set aside a judgment upon those principles which have heretofore been applied in such an action. Where the independent action is resorted to, the limitations of time are those of laches or statutes of limitations. The Committee has endeavored to ascertain all the remedies and types of relief heretofore available by *coram nobis*, *coram vobis*, *audita querela*, bill of review, or bill in the nature of a bill of review. See Moore and Rogers, *Federal Relief from Civil Judgments* (1946) 55 Yale L.J. 623, 659–682. It endeavored then to amend the rules to permit, either by motion or by independent action, the granting of various kinds of relief from judgments which were permitted in the federal courts prior to the adoption of these rules, and the amendment concludes with a provision abolishing the use of bills of review and the other common law writs referred to, and requiring the practice to be by motion or by independent action.

To illustrate the operation of the amendment, it will be noted that under Rule 59(b) as it now stands, without amendment, a motion for new trial on the ground of newly discovered evidence is permitted within ten days after the entry of the judgment, or after that time upon leave of the court. It is proposed to amend Rule 59(b) by providing that under that rule a motion for new trial shall be served not later than ten days after the entry of the judgment, whatever the ground be for the motion, whether error by the court or newly discovered evidence. On the other hand, one of the purposes of the bill of review in equity was to afford relief on the ground of newly discovered evidence long after the entry of the judgment. Therefore, to permit relief by a motion similar to that heretofore obtained on bill of review, Rule 60(b) as amended permits an application for relief to be made by motion, on the ground of newly discovered evidence, within one year after judgment. Such a motion under Rule 60(b) does not affect the finality of the judgment, but a motion under Rule 59, made within 10 days, does affect finality and the running of the time for appeal.

FRBP Rule 1009(a)

LII > Federal Rules of Bankruptcy Procedure

> **Rule 1009. Amending a Voluntary Petition, List, Schedule, or Statement**

FRBP

Rule 1009. Amending a Voluntary Petition, List, Schedule, or Statement

(a) In General.

(1) *By a Debtor.* A debtor may amend a voluntary petition, list, schedule, or statement at any time before the case is closed. The debtor must give notice of the amendment to the trustee and any affected entity.

(2) *By a Party in Interest.* On a party in interest's motion and after notice and a hearing, the court may order a voluntary petition, list, schedule, or statement to be amended. The clerk must give notice of the amendment to entities that the court designates.

(b) Amending a Statement of Intention. A debtor may amend a statement of intention at any time before the time provided in §521(a)(2) expires. The debtor must give notice of the amendment to the trustee and any affected entity.

(c) Amending a Statement of Social-Security Number. If a debtor learns that a social-security number shown on the statement submitted under Rule 1007(f) is incorrect, the debtor must:

(1) promptly submit an amended verified statement with the correct number (Form 121); and

(2) give notice of the amendment to all entities required to be listed under Rule 1007(a)(1) or (a)(2).

(d) Copy to the United States Trustee. The clerk must promptly send a copy of every amendment filed under this rule to the United States trustee.

Notes

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 23, 2008, eff. Dec. 1, 2008; Apr. 2, 2024, eff. Dec. 1, 2024.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule continues the permissive approach adopted by former Bankruptcy Rule 110 to amendments of voluntary petitions and accompanying papers. Notice of any amendment is required to be given to the trustee. This is particularly important with respect to any amendment of the schedule of property affecting the debtor's claim of exemptions. Notice of any amendment of the schedule of liabilities is to be given to any creditor whose claim is changed or newly listed.

The rule does not continue the provision permitting the court to order an amendment on its own initiative. Absent a request in some form by a party in interest, the court should not be involved in administrative matters affecting the estate.

If a list or schedule is amended to include an additional creditor, the effect on the dischargeability of the creditor's claim is governed by the provisions of §523(a)(3) of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

Subdivision (a) is amended to require notice and a hearing in the event a party in interest other than the debtor seeks to amend. The number of copies of the amendment will be determined by local rule of court.

Subdivision (b) is added to treat amendments of the statement of intention separately from other amendments. The intention of the individual debtor must be performed within 45 days of the filing of the statement, unless the court extends the period. Subdivision (b) limits the time for amendment to the time for performance under §521(2)(B) of the Code or any extension granted by the court.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

FRBP Rule 4003(b)(1)

Fed. R. Bankr. P. 4003*Not legal advice. Verify against official sources before relying on this text in any legal matter.*

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FRBP

RULE 4003**Exemptions****PART IV: THE DEBTOR'S DUTIES AND BENEFITS****Rule Text****(a) Claiming an Exemption.**

A debtor must list the property claimed as exempt under § 522 on Form 106C filed under Rule 1007. If the debtor fails to do so within the time specified in Rule 1007(c), a debtor's dependent may file the list within 30 days after the debtor's time to file expires.

(b) Objecting to a Claimed Exemption.

(1) By a Party in Interest. Except as (2) and (3) provide, a party in interest may file an objection to a claimed exemption within 30 days after the later of:

- the conclusion of the § 341 meeting of creditors;
- the filing of an amendment to the list; or
- the filing of a supplemental schedule.

On a party in interest's motion filed before the time to object expires, the court may, for cause, extend the time to file an objection.

(2) By the Trustee for a Fraudulently Claimed Exemption. If the debtor has fraudulently claimed an exemption, the trustee may file an objection to it within one year after the case is closed. The trustee must deliver or mail the objection to:

- the debtor;
- the debtor's attorney;
- the person who filed the list of exempt property; and
- that person's attorney.

(3) Objection Based on § 522(q). An objection based on § 522(q) must be filed:

- (A)** before the case is closed; or
- (B)** if an exemption is first claimed after a case has been reopened, before the reopened case is closed.

(4) Distributing Copies of the Objection. A copy of any objection, other than one filed by the trustee under (b)(2), must be delivered or mailed to:

- the trustee;

• the debtor;

• the debtor's attorney;

• the person who filed the list of exempt property; and

• that person's attorney.

(c) Burden of Proof.

In a hearing under this Rule 4003, the objecting party has the burden of proving that an exemption was not properly claimed. After notice and a hearing, the court must determine the issues presented.

(d) Avoiding a Lien or Other Transfer of Exempt Property.

(1) Bringing a Proceeding. A proceeding under § 522(f) to avoid a lien or other transfer of exempt property must be commenced by:

(A) filing a motion under Rule 9014; or

(B) serving a Chapter 12 or 13 plan on the affected creditors as Rule 7004 provides for serving a summons and complaint.

(2) Objecting to a Request Under § 522(f). As an exception to (b), a creditor may object to a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 23, 2008, eff. Dec. 1, 2008; Apr. 27, 2017, eff. Dec. 1, 2017; Apr. 2, 2024, eff. Dec. 1, 2024.)

Plain-English Summary *(for reference only — not a substitute for the rule text above)*

This summary is not the rule. The rule text controls.

When a debtor claims property as exempt, the debtor must list it, and Rule 4003 governs how that claim gets made and challenged. It covers listing exempt property, deadlines and procedures for a party in interest or the trustee to object, and who bears the burden of proof at a hearing. It also covers proceedings to avoid a lien or transfer that impairs an exemption under § 522(f), including how a creditor may challenge the exemption itself in defense.

Committee Notes

Notes of Advisory Committee on Rules—1983

This rule is derived from § 522(l) of the Code and, in part, former Bankruptcy Rule 403. The Code changes the thrust of that rule by making it the burden of the debtor to list his exemptions and the burden of parties in interest to raise objections in the absence of which "the property claimed as exempt on such list is exempt," § 522(l).

Subdivision (a). While § 522(l) refers to a list of property claimed as exempt, the rule incorporates such a list as part of Official Form No. 6, the schedule of the debtor's assets, rather than requiring a separate list and filing. Rule 1007, to which subdivision (a) refers, requires that schedule to be filed within 15 days after the order for relief, unless the court extends the time.

Section 522(l) also provides that a dependent of the debtor may file the list if the debtor fails to do so. Subdivision (a) of the rule allows such filing from the expiration of the debtor's time until 30 days thereafter. Dependent is defined in § 522(a)(1).

Subdivision (d) provides that a proceeding by the debtor permitted by § 522(f) of the Code is a contested matter rather than the more formal adversary proceeding. Proceedings within the scope of this subdivision are distinguished from proceedings brought by the trustee to avoid transfers. The latter are classified as adversary proceedings by Rule 7001.

Notes of Advisory Committee on Rules—1991 Amendment

Subdivision (b) is amended to facilitate the filing of objections to exemptions claimed on a supplemental schedule filed under Rule 1007(h).

Committee Notes on Rules—2000 Amendment

This rule is amended to permit the court to grant a timely request for an extension of time to file objections to the list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day period. The purpose of this amendment is to avoid the harshness of the present rule which has been construed to deprive a bankruptcy court of jurisdiction to grant a timely request for an extension if it has failed to rule on the request within the 30-day period. See *In re Laurain*, 113 F.3d 595 (6th Cir. 1997), *Matter of Stoulig*, 45 F.3d 957 (5th Cir. 1995), *In re Brayshaw*, 912 F.2d 1255 (10th Cir. 1990). The amendments clarify that the extension may be granted only for cause. The amendments also conform the rule to § 522(l) of the Code by recognizing that any party in interest may file an objection or request for an extension of time under this rule. Other amendments are stylistic.

GAP Report on Rule 4003(b). The words "trustee or creditor" were replaced by "party in interest" to conform to § 522(l) of the Bankruptcy Code which permits any party in interest to object to claimed exemptions. Style revisions also were made to the published draft.

Committee Notes on Rules—2008 Amendment

Subdivision (b) is rewritten to include four paragraphs.

Subdivision (b)(2) is added to the rule to permit the trustee to object to an exemption at any time up to one year after the closing of the case if the debtor fraudulently claimed the exemption. Extending the deadline for trustees to object to an exemption when the exemption claim has been fraudulently made will permit the court to review and, in proper circumstances, deny improperly claimed exemptions, thereby protecting the legitimate interests of creditors and the bankruptcy estate. However, similar to the deadline set in § 727(e) of the Code for revoking a discharge which was fraudulently obtained, an objection to an exemption that was fraudulently claimed must be filed within one year after the closing of the case. Subdivision (b)(2) extends the objection deadline only for trustees.

Subdivision (b)(3) is added to the rule to reflect the addition of subsection (q) to § 522 of the Code by the 2005 Act. Section 522(q) imposes a \$136,875 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider issues relating to § 522(q) late in the case, and the 30-day period for objections would not be appropriate for this provision.

Subdivision (d) is amended to clarify that a creditor with a lien on property that the debtor is attempting to avoid on the grounds that the lien impairs an exemption may raise in defense to the lien avoidance action any objection to the debtor's claimed exemption. The right to object is limited to an objection to the exemption of the property subject to the lien and for purposes of the lien avoidance action only. The creditor may not object to other exemption claims made by the debtor. Those objections, if any, are governed by Rule 4003(b).

Other changes are stylistic.

Changes Made After Publication. The deadline for filing objections to exemptions under subdivision (b)(1) was returned to 30 days after the conclusion of the § 341 meeting of creditors rather than the 60 day period proposed in the published rule. The second paragraph of the Committee Note which discussed this change was therefore deleted. Subdivisions (b)(2) and (b)(3) were amended to add the debtor and the debtor's attorney to the list of persons to whom objections to exemptions must be delivered.

Committee Notes on Rules—2017 Amendment

Subdivision (d) is amended to provide that a request under § 522(f) to avoid a lien or other transfer of exempt property may be made by motion or by a chapter 12 or chapter 13 plan. A plan that proposes lien avoidance in accordance with this rule must be served as provided under Rule 7004 for service of a summons and complaint. Lien avoidance not governed by this rule requires an adversary proceeding.

Committee Notes on Rules—2024 Amendment

FRBP Rule 9024

LII > Federal Rules of Bankruptcy Procedure > **Rule 9024. Relief from a Judgment or Order**

FRBP

Rule 9024. Relief from a Judgment or Order

(a) IN GENERAL. Fed. R. Civ. P. 60 applies in a bankruptcy case—except that:

(1) the one-year limitation in Fed. R. Civ. P. 60(c) does not apply to a motion to reopen a case or to reconsider an uncontested order allowing or disallowing a claim against the estate;

(2) a complaint to revoke a discharge in a Chapter 7 case must be filed within the time allowed by §727(e); and

(3) a complaint to revoke an order confirming a plan must be filed within the time allowed by §1144, 1230, or 1330.

(b) INDICATIVE RULING. In some instances, Rule 8008 governs postjudgment motion practice after an appeal has been docketed and is pending.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 2008, eff. Dec. 1, 2008; Apr. 25, 2014, eff. Dec. 1, 2014; Apr. 2, 2024, eff. Dec. 1, 2024.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Motions to reopen cases are governed by Rule 5010. Reconsideration of orders allowing and disallowing claims is governed by Rule 3008. For the purpose of this rule all orders of the bankruptcy court are subject to Rule 60 F.R.Civ.P.

Pursuant to §727(e) of the Code a complaint to revoke a discharge must be filed within one year of the entry of the discharge or, when certain grounds of revocation are asserted, the later of one year after the entry of the discharge or the date the case is closed. Under §1144 and §1330 of the Code a party must file a complaint to revoke an order confirming a chapter 11 or 13 plan within 180 days of its entry. Clauses (2) and (3) of this rule make it clear that the time periods established by §§727(e), 1144 and 1330 of the Code may not be circumvented by the invocation of F.R.Civ.P. 60(b).

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Clause (3) is amended to include a reference to §1230 of the Code which contains time limitations relating to revocation of confirmation of a chapter 12 plan. The time periods prescribed by §1230 may not be circumvented by the invocation of F.R.Civ.P. 60(b).

COMMITTEE NOTES ON RULES—2008 AMENDMENT

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

COMMITTEE NOTES ON RULES—2014 AMENDMENT

This rule is amended to include a cross-reference to Rule 8008. That rule governs the issuance of an indicative ruling when relief is sought that the court lacks authority to grant because of an appeal that has been docketed and is pending.

Changes Made After Publication and Comment. No changes were made after publication and comment.

COMMITTEE NOTES ON RULES—2024 AMENDMENT

The language of Rule 9024 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.