

PROPOSED TENTATIVE

On May 5, 2021, plaintiff Bank of America, N.A. (plaintiff) filed a complaint against defendant Marta Barriga-Magos (defendant), alleging common count causes of action, for damages of \$3,653.38. Entry of default and default judgment were made on September 17, 2021, in plaintiff's favor, for \$3,945.38. An abstract of judgment was issued on July 12, 2022, and a writ of execution for \$3,945.38 was issued on November 15, 2022, and again on February 18, 2025. Plaintiff has attempted to levy defendant's deposit account. According to plaintiff, "the Los Angeles County Sheriff/Bank of America are currently holding \$2,023.79." In a letter from the Los Angeles County Sheriff, dated June 10, 2025, it contends it is not holding any money.

On June 16, 2025, defendant filed a claim of exemption, pursuant to Code of Civil Procedure section 740.070 (all further statutory references are to this Code). She claims that more than "20% of [her] income was taken, and she only get[s] paid monthly." According to her financial declaration, defendant has a gross monthly payment of \$3,790, with \$862.11 paid for taxes, retirement, and dental insurance, leaving total disposable income of \$2,927.89 (defendant erroneously claims it is \$2927.56.) She claims to have no money in her checking account, and \$300 in her savings account. As for her monthly expenses, she pays as follows: \$600 for rent/house payments; \$600 for food and household supplies; \$100 for clothing; \$265 for medical and dental expenses; and \$500 for "transportation and auto expenses" She has total monthly expenses of \$2,065.¹ She is separated from her spouse, and thus there is no spousal income. She has no dependents, although she provides the following attestation: "Neither of my parents work because of disability and complications due to COVID, so I give them money when I can to help out when I can"

Plaintiff creditor has filed opposition. Plaintiff contends that defendant has failed to trace the bank account funds to any exemption, and thus the claim is incomplete. "There is no documentation proving the funds levied consists only of exempt funds." Further, according to plaintiff, defendant's "Financial Statement shows that the funds currently available in Judgment Debtor's checking account surpass the expenses reported as necessary for the support of his family." Plaintiff then challenges the amounts in defendant's financial statement claiming 1) \$600 for food and household and \$500 for transportation and auto expenses are excessive ; 2) it is unclear what the \$265 payment for insurance includes and 3) \$300 in savings could be used as part of the claim of exemption calculation. Plaintiff has indicated it submits on the briefing and will not make an appearance at today's hearing.

The court makes some preliminary observations about the briefing. Defendant clearly is relying on section 704.70, which governs exemptions following a levy on a bank account, although she makes no mention of any levied amount in her application. Only plaintiff in opposition mentions the amount that is at issue. Defendant does contend she has no money in her checking account (and one assumes this is true after the levy at issue), although she claims she

¹ Defendant lists a number of installment payment she makes to other creditors on her Financial Statement, with monthly payments totaling approximately \$375. Defendant has not included this amount in her monthly expense calculation, which is correct, as a debtor cannot pick and choose which debts to pay as part of the claim of exemption calculation. These installment payments accordingly have not been considered in the current exemption calculations.

has \$300 in her savings account. Plaintiff in opposition claims that either the Los Angeles County Sheriff and/or Bank of America is holding \$2,023.76 after the levy occurred. Yet a letter from the Los Angeles County Sheriff dated June 10, 2025, part of the record, indicates that it holds nothing from defendant's account. These conflicts/ambiguities have required the court to make the following critical assumptions.

First, the court assumes that what is at issue here is \$2,023.76, levied from defendant's bank account (and specifically, so it appears, her checking account). This is a one-time allotment/disbursement. While defendant in her financial declaration does not mention this amount, plaintiff creditor in opposition does, as noted. The court will assume this levied amount is the amount at issue here. The court will additionally assume that defendant has no money in her checking account and \$300 in her savings account.

Second, plaintiff in opposition contends that either Bank of America or the Los Angeles County Sheriff is holding the levied money (i.e., the \$2,023.76). It is clear, however, that the Los Angeles County Sheriff is *not* holding any money, based on the representation noted above. That means that Bank of America must be holding the money (at least per plaintiff's representations). The court assumes this is true without making any determinations on the subject, including whether the Bank of America has or is acting appropriately.

Third, and contrary to defendant's representations, the court finds there is sufficient evidence to show that the amount levied (\$2,023.76) can be traced to defendant's wages for purposes of determining the propriety of any claimed exemption. Defendant's financial statement, made under penalty of perjury, indicates only one source of income – wages from employment – and there is no reason to discount this. While defendant insists on documentary verification, that seems unnecessary given the amounts at issue and the logical inferences that can be drawn from defendant's declaration as submitted.

With these qualifications/clarifications/assumptions in mind, section 704.70, relied upon by plaintiff, governs any exemption for "paid earnings" paid into a deposit account that is levied by a creditor. "Paid earnings" is defined as "compensation paid by an employer to an employee for personal services performed by such employee, whether denominated wages, salary, commission, bonus or otherwise." The exemption for levying a bank account applies to "paid earnings" "during the 30-day period ending on the date of the levy." Such earnings that "can be traced into deposit accounts or in the form of cash are exempt if prior to payment levy were subject to a garnishment. However, to the extent the exempt earnings remain on hand at the end of the 30-day period, the debtor's basic necessities are deemed to have been satisfied without them; those earnings lose their exempt character and may be reached to satisfy an outstanding obligation to the judgment creditor. (*Sourcecorp, Inc. v. Shill* (2012) 1054, 1059-1061.)

Within these parameters, two exemptions are incorporated into section 704.70 which limit the amount that can be levied from defendant's accounts. Pursuant to section 706.50, the maximum that can be garnished from disposable earnings of an individual judgment debtor subject to wage garnishment (and thus ultimately a levy from a deposit account with paid earnings) shall not exceed the lesser of the following (1) twenty percent of the individual's disposable income; or 2) forty percent of the amount by which the individual's disposable income

for the week exceed 48 times the state minimum hourly wage in effect at the time the earnings are payable. Here, the court will use the first figure (20%), which is the lesser of the two. The maximum amount that can be garnished from defendant's disposable wages (after deductions of FICA, taxes, insurance, and retirement) (and thus levied from her accounts based on paid wages) is \$585.57 (based on defendant's monthly disposable income of \$2927.89, an amount the court accepts as true).

Additionally, a judgment debtor's earnings that are necessary for the support of the judgment debtor and his or her family are exempt from garnishment (and thus ultimately levy). (§ 706.051, subd. (a)(1) [called the hardship exemption].) This exemption is used to reduce the disposable income amount that can be garnished. A completed financial statement must be attached to the claim of exemption; it includes 13 categories of expenses; the reasonableness of the expenses reported in each category must be assessed. Although the burden of proof lies with the party claiming the exemption, exemption statutes are generally construed in favor of the debtor. (*Kono v. Meeker* (2011) 196 Cal.App.4th 81, 86.) Here, defendant claims monthly disposable income of \$2,065. Defendant challenges the food and household supplies of \$600 a month and the automobile expenses of \$500 a month as excessive, although the amounts seem reasonable, and thus the court will accept them as appropriate. The court is confused by defendant's claim that she has a \$265 expense for medical and dental payments (when she has insurance as noted in her financial declaration), and will therefore reduce the amount to \$150. The court thus finds defendant's monthly expenses under the hardship exemption to be \$2,065 - \$115, which equals \$1,950 for monthly expenses. This reduces the amount of disposable income that can be garnished as follows - \$2927.89 - \$1,950 equals \$977.89.

With these numbers in mind, the most that can be garnished from defendant's monthly wages is 20% of \$977.89, or \$195.57. As the court has determined that the levied amount of \$2,023.76, currently held by Bank of America, can be traced exclusively to defendant's paid earnings, the most that can be levied from the \$2,023.76 amount held is \$195.57. The court will add to the \$195.57 the \$300 in defendant's saving's account. As noted in *Sourcecorp, Inc., supra*, if earnings are still on hand after 30 days, the debtor's basic necessities have thus been satisfied without them. At that point defendant loses the character as exempt earnings. (206 Cal.App.4th at p. 1060.) The \$300 seems to fall into this non-exempt category. Accordingly, of the \$2,023.57 being held by Bank of America, the creditor is entitled to \$195.57 plus \$300, for a total of \$495.57. \$2,023.76 minus \$495.57 equals \$1,528.19. \$1,528.19 of the \$2,023.76 held by Bank of America should be returned to the debtor defendant. The proposed order submitted by defendant, discussed below, should reflect these amounts.

Summary: The court has made some preliminary assumptions given the conflicts in the briefing. The court will assume that the levied amount at issue is \$2,023.76, and that this amount is not held by the Los Angeles County Sheriff, but by Bank of America. The court will assume without deciding that this procedure is appropriate. Further, contrary to defendant's argument, there is sufficient evidence in the record to show that plaintiff can trace all amounts that have been levied (i.e., \$2,023.76) to her paid earnings, and thus the two exemptions incorporated into section 704.70 – the maximum allowed garnishment for wages pursuant to section 706.50 and the hardship exemption per section 706.51 – apply. Further, the court assumes that defendant

has no money in her checking account and \$300 in her savings account for purposes of the calculations at hand, based on defendant's declaration.

With these determinations/assumptions in mind, the court finds that defendant's monthly disposable income is \$2,927.89 (defendant's statement contained a mathematical error); that defendant's monthly expenses are \$1,950; and that defendant's disposable monthly income is \$977.89. The maximum amount that can be garnished (and thus levied from her account based on her wages placed into that account) is \$195.57 per month. Further, because the \$300 in savings is not exempt, plaintiff is entitled to levy that amount (for a total amount of \$495.97, which is under the maximum amount of \$585.57 based on disposable income of \$2,927.89, per section 706.50). This means that plaintiff is entitled to \$495.57 of the \$2,023.76 held by Bank of America, with \$1,528.19 to be returned to defendant debtor. The court wants to make it clear that this is a one-time allotment/disbursement from the levied amount of \$2,023.76, based on the allegations and evidence presented. Nothing in this order should be read to allow levy or garnishment beyond this one-time allotment/disbursement.

Plaintiff, who will not make an appearance at today's hearing, is directed to submit a proposed order for signature in line with this court's conclusions. The clerk should be directed to send the court's final order to the parties.