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5 FOR PUBLICATION

6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF CALIFORNIA
8 FRESNO DIVISION

8 In re) Case No. 11-60514-B-13
9 Shane Dunnaway and)
10 Carol Lyn Dunnaway,)
11 Debtors.)

12 In re) Case No. 11-17278-B-13
13 Edward Frank Jones, Jr., and)
14 Mary Ann Jones,)
15 Debtors.)

16 In re) Case No. 11-61974-B-13
17 David Ray Brown and)
18 Erin Rose Brown,)
19 Debtors.)

20 In re) Case No. 11-61580-B-13
21 Grant Edgar Southwell,)
22 Debtor.)
23

24 **MEMORANDUM DECISION REGARDING TRUSTEE'S**
25 **OBJECTION TO EXEMPTIONS**

26 Sarah R. Velasco, Esq., appeared on behalf of the chapter 13 trustee,
Michael H. Meyer, Esq.

27 Patrick Kavanagh, Esq., appeared on behalf of the debtors, Shane and Carol
28 Dunnaway, Edward and Mary Jones, David and Erin Brown, and Grant
Southwell.

1 Before the court are four identical objections to debtors' claimed
2 exemptions filed by the chapter 13 trustee, Michael H. Meyer, Esq. (the
3 "Trustee") in the above-referenced cases (collectively, the "Objection").
4 The Trustee objects to the fact that the debtors have attempted to exempt
5 their interest in one or more firearms as either "household goods" or
6 "ordinarily and reasonably necessary personal property" (collectively,
7 "household property") under the applicable provisions of California law.
8 The Trustee requests a ruling that essentially prohibits the exemption of *all*
9 firearms as "household property." For the reasons set forth below, the
10 Objection will be overruled.

11 This memorandum decision contains findings of fact and conclusions
12 of law required by Federal Rule of Civil Procedure 52(a), made applicable
13 to this contested matter by Federal Rules of Bankruptcy Procedure 7052
14 and 9014(c).¹ The bankruptcy court has jurisdiction over this matter
15 pursuant to 28 U.S.C. §§ 1334 and 157, 11 U.S.C. § 522, and General
16 Orders 182 and 330 of the U.S. District Court for the Eastern District of
17 California. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A)
18 and (O).

19 **Background and Findings of Fact.**

20 **Shane & Carol Dunnaway.** Shane and Carol Dunnaway (the
21 "Dunnaways") listed two firearms with an aggregate value of \$800 on line 8
22 of Schedule B in the category of "Firearms and sports, photographic, and
23 other hobby equipment." The firearms are located at the Dunnaways'

25 ¹Unless otherwise indicated, all chapter, section and rule references are to
26 the Bankruptcy Code, 11 U.S.C. §§ 101–1330, and to the Federal Rules of
27 Bankruptcy Procedure, Rules 1001–9036, as enacted and promulgated *after*
28 October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and
Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23
(enacted April 20, 2005).

1 residence. They claimed an exemption for their interest in the firearms
2 pursuant to § 703.140(b)(3) of the California Code of Civil Procedure
3 (“C.C.P.”) on Schedule C. These two firearms are described as a “Ruger
4 rifle M77-270” valued at \$500 and a “Glock 40 mag handgun” valued at
5 \$300. The Trustee does not object to the value of the firearms, only to their
6 categorization as “household property.”

7 In response to the Trustee’s Objection, the Dunnaways filed separate
8 declarations to explain their personal use of the firearms for home
9 protection and for obtaining food. The Dunnaways live in the town of
10 Olancho in Inyo County, a rural area in which, according to the Dunnaways,
11 there are persistent problems with transients and marijuana cultivation. The
12 closest law enforcement station is located 50 to 60 miles away. Carol
13 Dunnaway keeps the handgun for protection while her husband is away
14 working in Los Angeles.

15 Shane Dunnaway uses the rifle for hunting to supplement his
16 family’s food supply. In the past, he has hunted deer, qual, chukar, and
17 duck, and he consumes the meat. He states that other members of the
18 Olancho community own rifles for hunting and handguns for self-
19 protection.

20 **Edward & Mary Jones.** Edward and Mary Jones (the “Joneses”)
21 listed four firearms with an aggregate value of \$1,000 on line 8 of Schedule
22 B. The firearms are located at the Joneses’ address of record in the city of
23 Bakersfield. They claimed an exemption for their interest in the firearms
24 pursuant to C.C.P. § 703.140(b)(3) on Schedule C. These four firearms are
25 described as a “Phoenix Arms 22 pistol,” a “Winchester 12 gauge firearm,”
26 a “7 mm Springfield firearm,” and a “Phoenix Arms 380 firearm.”

27 In response to the Trustee’s Objection, Edward Jones filed a
28 declaration explaining that he uses the rifles (without specifying which

1 ones) for hunting deer to supplement his food supply. He is a veteran of the
2 Vietnam War and states that “guns have always been a part of [his] life.”

3 **David & Erin Brown.** David and Erin Brown (the “Browns”) listed
4 one firearm, a “Beretta Nova 12 gauge shotgun,” with a value of \$450 on
5 line 8 of Schedule B and exempted it on Schedule C pursuant to C.C.P.
6 § 703.140(b)(3). The firearm is located at the Browns’ residence.

7 In response to the Trustee’s objection, David Brown filed a
8 declaration to explain that he uses the shotgun for hunting birds, particularly
9 quail, ducks, geese, and chukar, to supplement his food supply. The
10 Browns live in rural Inyo County in the town of Bishop. According to
11 David Brown, it is common for members of the Bishop community to own
12 firearms and use them for hunting.

13 **Grant Southwell.** Grant Southwell (“Southwell”) listed two
14 firearms with an aggregate value of \$445 on line 8 of Schedule B and
15 claimed an exemption on Schedule C for his interest in the firearms
16 pursuant to C.C.P. § 740.020. These two firearms are described as a
17 “Remington 870 Express Mag 12 Gauge Shotgun” valued at \$220 and a
18 “Ruger Black Hawk 357 Firearm” valued at \$225. Southwell resides in the
19 city of Bakersfield. He filed a response to the Trustee’s Objection but did
20 not attach a declaration to address the location, use, and purpose of his
21 firearms.

22 **Issues Presented.**

23 In each of the four cases, the Trustee argues that the California
24 exemption scheme does not permit the exemption of any firearm under
25 either C.C.P. § 703.140(b)(3) or § 704.020. The Trustee has not objected to
26 the exemptions based on the value or use of the firearms. He also has not
27 presented any evidence to rebut the debtors’ declarations or to support his
28 contention regarding the characterization of firearms as something other

1 than “household property.” Rather, the Trustee invites the court to make a
2 ruling that firearms, *per se*, cannot be included in “household property”
3 exemptible under the above statutes.

4 **Analysis and Conclusions of Law.**

5 **California Exemptions.** Section 522 of the Bankruptcy Code
6 allows individual debtors to exempt an interest in certain items of personal
7 property from the bankruptcy estate. *See* § 522(b)(1). While the Code
8 includes a federal exemption scheme under § 522(d), it also permits the
9 states to opt out of the federal scheme and provide their own exemptions for
10 debtors in bankruptcy. *See* § 522(b)(2). California is one of the states that
11 has chosen to opt out. *See* C.C.P. §§ 703.130, 703.140; *see also In re*
12 *Talmadge*, 832 F.2d 1120, 1122–23 (9th Cir. 1987). An individual debtor
13 in bankruptcy in California may choose between two mutually exclusive
14 sets of state exemptions, one for debtors generally and another specifically
15 for debtors in bankruptcy. *In re McKown*, 203 F.3d 1188, 1189 (9th Cir.
16 2000); *see also* C.C.P. § 703.140(a).

17 The rules that govern the exemption of property in California are
18 found in C.C.P. §§ 703.010–704.995. The general exemption statute
19 applicable here is C.C.P. § 704.020, which provides, in pertinent part:

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

22 (1) If ordinarily and reasonably necessary to, and personally
23 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.

24 C.C.P. § 704.020 (emphasis added).

25 Alternatively, the bankruptcy-specific exemptions are found in
26 C.C.P. § 703.140(b). Under the applicable subsection, a debtor is allowed
27 to exempt his or her

28 interest, not to exceed [\$550] in value in any particular item,

1 in *household furnishings, household goods*, wearing apparel,
2 appliances, books, animals, crops, or musical instruments, that
3 are held primarily for the personal, family, or household use
of the debtor or a dependent of the debtor.

4 C.C.P. § 703.140(b)(3) (emphasis added).

5 Here, the Dunnaways, the Joneses, and the Browns have elected to
6 exempt their firearms as “household furnishings” or “household goods”
7 under C.C.P. § 703.140(b)(3). In contrast, Southwell has elected to exempt
8 his firearms as “ordinarily and reasonably necessary personal property”
9 under C.C.P. § 704.020. Although the two exemption statutes vary slightly
10 in their wording, the analysis of each statute is essentially the same. The
11 two sets of exemptions are intended to be mutually exclusive; however, the
12 expanded description of property in C.C.P. § 704.020 may nevertheless be
13 applied to interpret the terms used in C.C.P. § 703.140(b). *See In re*
14 *Thornton*, 91 B.R. 913, 915 (Bankr. C.D. Cal. 1988).

15 **Burden of Proof.** It is well accepted in the Ninth Circuit that a
16 claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027,
17 1029 n.3 (9th Cir. 1999) (citations omitted). Once the exemption has been
18 claimed and an objection has been raised, “the objecting party has the
19 burden of proving that the exemptions are not properly claimed.” FED. R.
20 BANKR. P. 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. BAP 2005).
21 This means that the objecting party not only has the burden of producing
22 evidence rebutting the presumptively valid exemption but also the ultimate
23 burden of persuasion. *Carter*, 182 F.3d at 1029 n.3. So even if the
24 presumption of validity is rebutted with evidence from the objecting party
25 forcing the debtor to come forward with unequivocal evidence to support
26 the claimed exemption, “[t]he burden of persuasion . . . always remains with
27 the objecting party.” *Id.* Here, the Trustee, as the party objecting to the
28 debtors’ exemptions, has the burden of production and persuasion to prove

1 that the debtors improperly exempted their firearms.

2 **Exemption of Firearms.** The question of what property a debtor
3 may exempt is determined by state, not federal, law. *See In re Herman*, 120
4 B.R. 127, 129 (9th Cir. BAP 1990) (citing *Thornton*, 91 B.R. at 914); *see*
5 *also In re Eveland*, 87 B.R. 117, 121 (Bankr. E.D. Cal. 1988) (stating that
6 the issue of which liens may be avoided under § 522(f), in contrast, is a
7 question of *federal law*). The validity of a debtor’s state exemption claim is
8 controlled by California law and by California’s rules of construction. *In re*
9 *Goldman*, 70 F.3d 1028, 1029 (9th Cir. 1995) (per curiam) (citing *In re*
10 *Anderson*, 824 F.2d 754, 756 (9th Cir. 1987)). One basic rule of statutory
11 construction requires California courts to “‘give effect to statutes according
12 to the usual, ordinary import of the language employed in framing them.’”
13 *Id.* (quoting *Cal. Teachers Ass’n v. San Diego Cmty. Coll. Dist.*, 28 Cal. 3d
14 692, 698 (1981)).

15 Yet, under California law, statutes should also be interpreted in light
16 of their purposes, rather than construed mechanically. *In re Reaves*, 256
17 B.R. 306, 310 (9th Cir. BAP 2000) (citing *S.F. Found. v. Superior Court*,
18 37 Cal. 3d 285, 297 (1984)), *aff’d*, 285 F.3d 1152 (9th Cir. 2002). The
19 California exemption statutes are to be liberally construed, as their manifest
20 purpose is to “‘sav[e] debtors and their families from want by reason of
21 misfortune or improvidence.’” *In re Turner*, 186 B.R. 108, 113 (9th Cir.
22 BAP 1995) (quoting *In re Crosby’s Estate*, 2 Cal. 2d 470, 473 (1935)).

23 With these principles in mind, this court must determine whether the
24 debtors’ firearms qualify as “household property” meaning they are “held
25 primarily for the personal, family, or household use of the debtor[s]” under
26 C.C.P. § 703.140(b)(3) or are “ordinarily and reasonably necessary to, and
27 personally used or procured for use by” the debtors at their principal place
28 of residence under C.C.P. § 704.020.

1 The Ninth Circuit Bankruptcy Appellate Panel’s (“BAP”) decision in
2 *In re Lucas*, 77 B.R. 242 (9th Cir. BAP 1987), is the leading appellate case
3 in this Circuit on what may constitute “household goods” under C.C.P. §
4 703.140(b)(3). There, the BAP held that the debtors could exempt their
5 golf clubs, camera equipment, exercise bike, and decorative figurines as
6 household property. *Id.* at 245–46. In reaching this conclusion, the panel
7 relied on a number of factors. *Id.* at 245.

8 First, the BAP noted that the California exemption statutes do not
9 explicitly define “household furnishings” or “household goods,” so it
10 looked to C.C.P. § 704.020, the state’s general exemption statute, for
11 guidance. *Id.* Section 704.020 begins by allowing the exemption of
12 “household furnishings”² that are ordinarily and reasonably necessary to
13 and personally used by the debtor. The statute then offers the following
14 definition:

15 (b) In determining whether an item of property is
16 “ordinarily and reasonably necessary” under [§ 704.020(a)],
the court shall take into account both of the following:

17 (1) The extent to which the particular type of
18 item is ordinarily found in a household.

19 (2) Whether the particular item has
20 extraordinary value as compared to the value of items of the
same type found in other households.

21
22 ²The court notes that C.C.P. § 703.140(b)(3) refers to both “household
23 furnishings” and “household goods” while C.C.P. § 704.020 refers only to
24 “household furnishings” and fails to mention “household goods.” The court
views the omission of “household goods” from the latter statute as a “distinction
25 without a difference” since the former provision was modeled almost identically
to former § 522(d) of the Bankruptcy Code. *See In re Steward*, 227 B.R. 895, 898
26 (9th Cir. BAP 1998) (citations omitted); *compare* C.C.P. § 703.140(b), with 11
U.S.C.
27 § 522(d) (1982), *amended by* Bankruptcy Amendments and Federal Judgeship
Act of 1984, Pub. L. No. 98-353, 98 Stat. 333. Further, there is no reason why
28 the term “other personal effects” in C.C.P. § 704.020 could not include the
omitted “household goods.”

1 C.C.P. § 704.020(b).

2
3 Secondly, the BAP looked at decisions of California courts faced
4 with this similar issue. *Lucas*, 77 B.R. at 245. Those courts have
5 considered “the station in life of the owner and the manner of comfortable
6 living to which he has become accustomed.” *Id.* (internal quotation marks
7 omitted) (citing *Independence Bank v. Heller*, 275 Cal. App. 2d 84, 87
8 (1969); *Newport Nat’l Bank v. Adair*, 2 Cal. App. 3d 1043, 1046 (1969)).
9 The panel then considered the debtors’ status in life and the important
10 recreational value of the disputed property. *Id.* Finally, the panel
11 recognized the principle that exemptions ought to be liberally construed in
12 favor of the debtors. *Id.* (citing *In re Ageton*, 14 B.R. 833, 836 (9th Cir.
13 BAP 1981)). Given these factors, the BAP held that the debtors could
14 exempt their golf clubs, camera equipment, exercise bike, and decorative
15 figurines as household property under C.C.P. § 703.140(b)(3). *Id.* at
16 245–46.

17 Using *Lucas* as a backdrop, two trial court decisions from this circuit
18 have, to some extent, addressed the firearms exemption issue. In the first
19 case, *In re Eveland*, the bankruptcy court considered the debtors’ motion to
20 avoid a non-possessory, non-purchase money lien against some firearms
21 under § 522(f). 87 B.R. at 119. While the court did not decide what
22 property was exempt under state law, it nevertheless applied *Lucas*’s
23 analysis of the debtors’ station in life and manner of living to determine the
24 scope of the lien avoidance power. *Id.* at 121. It concluded that firearms
25 would not be exempt as household property under the rationale of *Lucas*,
26 but noted that firearms might be exemptible as tools of the trade for a law
27 enforcement officer. *Id.* The court ultimately held that the debtors could
28

1 not avoid the lien on their firearms since they could not claim an exemption
2 in the firearms. *Id.*

3 This court declines to follow *Eveland* for two reasons. First, it dealt
4 with the issue of lien avoidance, which is a question of uniform federal law,
5 rather than the issue of exempt property, which is a function of state law.
6 Second, the *Eveland* court based its holding on the observation that
7 California law, through amendments to its exemption statutes, no longer
8 expressly provides for the exemption of firearms. *Id.* The court looked first
9 to the language in former C.C.P. § 690.1 which was repealed in 1982. *Id.* at
10 121 n.5. This exemption statute did allow specifically the exemption of
11 “one shotgun and the rifle,” providing that:

12 Necessary household furnishings and appliances and wearing
13 apparel, ordinarily and reasonably necessary to, and
14 personally used by, the debtor and his resident family,
15 *including, but not limited to*, one piano; one radio and one
16 television receiver; provisions and fuel actually provided for
the debtor and his resident family’s use, sufficient for three
months; *one shotgun and one rifle*. Works of art shall not be
exempt unless of or by the debtor and his resident family.

17 C.C.P. § 690.1 (West Supp. 1981) (emphasis added), *repealed by* Cal. Stat.
18 1982, ch. 1364, § 1, at 5070 (1982) (operative on July 1, 1983).

19 Former C.C.P. § 690.1 was subsequently superseded by the now
20 familiar C.C.P. § 704.020. *See* 16 CAL. LAW REVISION COMM’N REPORTS
21 1867 (1982). Unlike its predecessor, the current statute is not restrained to
22 a specific list of household items. Instead, the current statute is much
23 broader in its description of the exemptions; it allows *generally* for the
24 exemption of “[h]ousehold furnishings, appliances, provisions, wearing
25 apparel, and other personal effects,” without limiting that field to specific
26 items of personal property. C.C.P. § 704.020(a). In contrast to the language
27 of former C.C.P. § 690.1, the only limitation under the current statute is that
28

1 the exempted household items be “ordinarily and reasonably necessary to,
2 and personally used” by the debtor or the members of his or her family. *Id.*

3 Deletion of the itemized list from the current statute cannot be
4 construed as a sign of the California legislature’s intent to categorically
5 disallow the exemption of the now omitted items, including “one shotgun
6 and one rifle.” The current statute did not only eliminate “one shotgun and
7 one rifle” from the list, it also deleted reference to “one radio and one
8 television receiver.” This could hardly mean that the California legislature
9 intended to prohibit debtors from exempting their radios and televisions.
10 By deleting the statutory list from former C.C.P. § 690.1 and broadly
11 describing “household furnishings” in the new C.C.P. § 704.020, it appears
12 that the California legislature intended to expand, not constrict, the scope of
13 the exemption statute to address the evolving nature of what today may be
14 considered ordinarily and reasonably necessary items in a household.

15 In *In re Thornton*, the bankruptcy court held that the debtor’s seven
16 antique rifles did not qualify as exempt “household furnishings” or
17 “household goods” under C.C.P. § 703.140(b). 91 B.R. at 916. In coming
18 to this conclusion, the court also looked to *Lucas*, stating that “[o]wning
19 firearms no longer has anything to do with one’s station in life and manner
20 of living; they have been replaced by other goods which are essential to the
21 ‘fresh start’ philosophy.” *Id.* It considered “answering machines, VCRs,
22 stereos, and computers” as examples of personal property that “make it
23 possible for a debtor to quickly reestablish and make a fresh start in our
24 society.” *Id.* Under the trial court’s theory that firearms should no longer
25 be considered reasonably necessary household furnishings, the debtor was
26 not permitted to avoid the liens against his antique firearms. *Id.* at 915.

27 Although *Thornton*, like *Eveland*, barred the debtor from exempting
28 his firearms, this court also declines to follow *Thornton* for several reasons.

1 First, the Trustee relies too heavily on the *Thornton* court’s suggestion that
2 a firearm can serve no useful function in today’s households. The Trustee
3 focuses specifically on the court’s statement that “[i]n our modern urban,
4 industrial, technological and service oriented society, firearms are not
5 usually considered reasonably necessary household furnishings as they
6 would have been 100 years ago on the frontier” and that “[o]wning firearms
7 no longer has anything to do with one’s station in life and manner of
8 living.” *Id.* at 915-16. This passage appears to be merely a statement of the
9 *Thornton* court’s personal view of firearms, rather than a specific finding of
10 fact based on proffered evidence. The objecting creditor in *Thornton*
11 offered no evidence to support the court’s comments.³

12 Further, the *Thornton* court itself noted that the “list of exempt
13 [personal] property [under California law] continues to expand.” *Id.* at 915.
14 Yet, the court still summarily excluded the subject firearms from inclusion
15 on that list. By doing so, like *Eveland*, the *Thornton* court failed to consider
16 the fact that former C.C.P. § 690.1 was repealed and replaced with a
17 broader, more flexible exemption statute in C.C.P. § 704.020.

18 Lastly, the facts and resulting analysis of *Thornton* are
19 distinguishable from the cases before this court. The *Thornton* court noted
20 that the debtor used the antique firearms exclusively “for display or
21 conversation purposes just like a painting or [decorative] figurine.” *Id.* At
22 the same time, the court made a point of specifically acknowledging that its
23 case “[did] not involve the use of these rifles for protection or to procure
24 food for the table.” *Id.* Even the California courts have recognized, for the
25 purpose of claiming exemptions, that a debtor’s use of household items

26
27 ³The creditor in *Thornton* offered expert testimony only regarding
28 the value of the firearms based on their age and condition. 91 B.R. at
915–16.

1 cannot be “purely ornamental” but must “serve some useful purpose.”
2 *Independence Bank*, 275 Cal. App. 2d at 89. *But see Lucas*, 77 B.R. at 246
3 (concluding that decorative figurines were analogous to paintings but were
4 nonetheless exemptible as household property). It follows then that the
5 result in *Thornton* might have been different if the facts had shown that the
6 debtor used the firearms for a useful purpose, such as home protection or
7 the procuring of food.

8 While the Trustee argues for a *per se* rule prohibiting the exemption
9 of firearms as “household property,” such a rule would ignore the BAP’s
10 analysis in *Lucas* and would fail to acknowledge the breadth and flexibility
11 of the relevant California exemption statutes. There is no reason why
12 firearms of moderate value, owned and used for hunting, protection, or
13 general recreational purposes cannot exist in the same category as golf
14 clubs, camera equipment, and an exercise bike. *See id.* at 245. Moreover,
15 in light of the “liberal construction” policy applicable in general to
16 California exemptions, and the “presumption of validity” applicable to the
17 exercise of those exemptions in a bankruptcy context, it is not the debtors’
18 burden to prove that their firearms do satisfy some specific set of criteria to
19 be eligible for exemption. Rather, it is the Trustee’s burden to make at least
20 a *prima facie* factual showing why the firearms should not qualify as
21 “household property” within the meaning of the exemption statutes. If the
22 Trustee were to make that showing, then the court would have to look to the
23 debtor’s specific circumstances to determine whether use of a firearm
24 contributes to the debtor’s station in life and manner of living, as suggested
25 by *Lucas*.

26 This inquiry would require the court to consider several factors,
27 including, but not limited to, the debtor’s personal use and purpose for
28 keeping the firearm(s), any potential recreational value for the firearm(s),

1 the reasonable necessity of the firearm(s), and the local community
2 standards. Such use does not necessarily have to be for survival but may be
3 for recreational purposes as well, as long as use of the firearm “permit[s]
4 debtors to physically and mentally ‘recharge their batteries’ thereby
5 improving both their performance and contribution to society and
6 themselves.” *Thornton*, 91 B.R. at 916; *see also Lucas*, 77 B.R. at 245
7 (considering the “manner of *comfortable* living to which [the debtor] *has*
8 *become accustomed*” (emphasis added)).

9 The court should also consider whether the firearm is reasonably
10 necessary to the debtor. The term “reasonably necessary” is not meant to be
11 defined as “indispensable.” *See Independence Bank*, 275 Cal. App. 2d at
12 88. Additionally, reasonable necessity should not limit a debtor to only the
13 bare essentials necessary for survival. *See In re Frazier*, 104 B.R. 255, 260
14 (Bankr. N.D. Cal. 1989) (allowing debtor to exempt two, rather than one,
15 televisions). At the same time, the court cannot allow a debtor to abuse the
16 California exemption scheme by claiming an exemption in luxury items. *Id.*

17 Lastly, evidence regarding the general custom and practice in the
18 debtor’s community may also be relevant to the inquiry. This would
19 provide the court with information to show whether a firearm is “ordinarily
20 found in a household” within the debtor’s community, and may support a
21 finding that the debtor’s use and ownership of a firearm is ordinary and
22 reasonable under the circumstances.

23 Here, all of the debtors except Southwell have offered evidence to
24 support a finding that their ownership and use of firearms are reasonable,
25 necessary, and consistent with their station in life, and contribute to their
26 recreation, survival, and/or protection. The Trustee has not provided any
27 evidence to rebut the debtors’ declarations. Given that the Trustee, as the
28 objecting party, has the ultimate burden of persuasion, the court is not

1 persuaded that the Dunnaways, Joneses and Browns improperly exempted
2 their interest in the firearms under C.C.P. § 703.140(b)(3).

3 Turning now to Southwell's exemption, Southwell did not offer a
4 declaration to explain his use of the two firearms he valued at \$445.
5 Likewise, the Trustee offers no evidence to rebut the presumption that
6 Southwell's exemption is valid. Given the fact that all of the debtors are
7 represented by the same attorney, the court can infer that a declaration from
8 Southwell would have offered essentially the same facts as those of the
9 other debtors. The value of Southwell's firearms is not extraordinary.
10 There is nothing in the description of the firearms, one shotgun and one
11 pistol, to suggest that they too are not generally used for hunting,
12 protection, and/or recreation. The Trustee has not carried his burden to
13 show that Southwell's exemption of the firearms is inappropriate under
14 C.C.P.
15 § 704.020.

16 **Conclusion.**

17 Based on the foregoing, the court finds and concludes that the
18 debtors' exemption of firearms as "household property" in each of the
19 above cases is presumptively valid. The Trustee has not sustained his
20 burden of proof to show otherwise. The fact that firearms are not expressly
21 enumerated for inclusion in the applicable California exemption statutes
22 does not lead to the conclusion that firearms must be excluded. The
23 Trustee's Objection to the debtors' exemption of firearms under C.C.P.
24 §§ 703.140(b)(3) and 704.020 will be overruled.

25 Dated: March 6, 2012

26
27 /s/ W. Richard Lee
28 W. Richard Lee
 United States Bankruptcy Judge