



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, December 22, 2022  
Department A – Courtroom #11  
Fresno, California**

*Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.*

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) via **ZOOM.GOV VIDEO**, (2) via **ZOOM.GOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

Prior to the hearing, parties appearing via Zoom or CourtCall are encouraged to review the court's [Zoom Procedures and Guidelines](#) or [CourtCall Appearance Information](#).

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided:

**Video web address:**

<https://www.zoomgov.com/j/1607605646?pwd=bEVxRTFuU0dhRzkxK3FIQXdKdzQzZz09>

**Meeting ID:** 160 760 5646

**Password:** 039553

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**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

1. [19-10404](#)-A-13     **IN RE: MARIA VASQUEZ**  
[MHM-3](#)

MOTION TO DISMISS CASE  
11-23-2022    [[55](#)]

MICHAEL MEYER/MV  
BENNY BARCO/ATTY. FOR DBT.

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on December 14, 2022. Doc. #59.

2. [22-11852](#)-A-13     **IN RE: KERRIE GRAY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-17-2022    [[28](#)]

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    The minutes of the hearing will be the court's findings  
and conclusions.

ORDER:                            The court will issue an order.

This matter will proceed as scheduled. An amended creditor matrix (Doc. #10) was filed by the debtor on November 3, 2022, which added a creditor who was not listed on the previously filed creditor matrix. A fee of \$32.00 was required at the time of filing because the amended creditor matrix added a creditor. The fee was not paid. A notice of payment due was served on the debtor on November 9, 2022. Doc. #13.

If the filing fee of \$32.00 is not paid prior to the hearing, the amended creditor matrix (Doc. #10) may be stricken, and sanctions will be imposed on the debtor on the grounds stated in the order to show cause.

3. [22-10973](#)-A-13     **IN RE: DANIEL NAKAHIRA**  
[PLG-1](#)

MOTION TO MODIFY PLAN  
11-15-2022    [\[23\]](#)

DANIEL NAKAHIRA/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on December 14, 2022. Doc. #31.

4. [22-11787](#)-A-13     **IN RE: RICHARD STERLING**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
11-21-2022    [\[23\]](#)

MICHAEL MEYER/MV

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Objection sustained.

ORDER:                            The court will issue an order.

This objection to the debtor's claim of exemption was set for hearing on at least 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the debtor is entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the objecting party has done here.

As an informative matter, the certificate of service filed in connection with this objection to debtor's claim of exemptions (Doc. #25) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

Michael H. Meyer ("Trustee"), the Chapter 13 trustee in the bankruptcy case of Richard Sterling ("Debtor"), objects to Debtor's claim of a homestead exemption under California Code of Civil Procedure ("C.C.P.") § 704.730 in the amount of \$75,000.00 in real property located at 13457 Elridge Ave. (the "Elridge Property") on two grounds: (1) Debtor did not physically reside in the Elridge Property at the time of the filing of the bankruptcy petition, and (2) Debtor did not provide evidence of his intent to reside at the Elridge Property at the time of the filing of the bankruptcy petition. Tr.'s Obj., Doc. #23; see Schedule C, Doc. #20.

Debtor filed his Chapter 13 case on October 19, 2022. In his voluntary petition, Debtor stated that he lived at 1905 E. Alpine Ave., Tulare, CA 93274 (the "Alpine Property"). Petition, Doc. #1. Debtor listed the Alpine Property in his Schedule A/B and claimed the Elridge Property as exempt in his Schedule C under C.C.P. § 704.730. Tr.'s Obj., Doc. #23; see Schedules A/B & C, Doc. #20. Debtor did not list the Elridge Property in his Schedule A/B. Schedule A/B, Doc. #20.

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires [him] to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.730] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

California has opted out of the federal exemption scheme. C.C.P. § 703.130; Philips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018). "As a result, '[t]he bankruptcy court decides the merits of state exemptions, but the validity of the exemption is controlled by California law.'" Gilman, 887 F.3d at 964 (quoting Diaz, 547 B.R. at 334). In considering California's homestead legislation, "the duty of the federal court is to ascertain and apply the existing California law." Klingebiel v. Lockheed Aircraft Corp., 494 F.2d 345, 346 (9th Cir. 1974); see also Fortuna v. Naval Weapons Ctr. Fed. Credit Union (In re La Fortuna), 652 F.2d 842, 846 (9th Cir. 1981). The court is "mindful of the California authorities which admonish that 'the homestead statutes are to be construed liberally on behalf of the homesteader.'" Redwood Empire Prod. Credit Ass'n v. Anderson (In re Anderson), 824 F.2d 754, 759 (9th Cir. 1987) (quoting Ingebretsen v. McNamer, 137 Cal. App. 3d 957, 960 (1982)). "But liberal construction in favor of the debtor does not give us license to rewrite the California legislature's scheme for homestead protection." Id.

By asserting an exemption pursuant to C.C.P. § 704.730, Debtor is asserting an automatic homestead exemption in the Elridge Property. An automatic homestead exemption protects a debtor who resides in a homestead property at the time a forced judicial sale of the dwelling is filed. C.C.P. § 704.720(a); Gilman, 887 F.3d at 964; Diaz, 547 B.R. at 334. "The filing of a bankruptcy petition constitutes a forced sale for the purposes of the automatic homestead exemption." Diaz, 547 B.R. at 334.

The property to which an automatic homestead exemption applies must be a homestead as that term is defined by C.C.P. § 704.710(c). Anderson, 824 F.2d at 758. California Code of Civil Procedure section 704.710(c) defines homestead as follows:

"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.

C.C.P. § 704.710(c).

Trustee contests that the Elridge Property is Debtor's homestead as defined by C.C.P. § 704.710(c). Tr.'s Obj., Doc. #23. Trustee states that Debtor's schedules demonstrate that Debtor did not physically live at the Elridge Property at the time Debtor's bankruptcy case was filed. Id. In addition, Trustee states that according to Question 2 of Debtor's Statement of Financial Affairs ("SOFA"), Debtor lives at the Alpine Property and has not lived at the Elridge Property in the last three years. SOFA, Doc. #20; Tr.'s Obj., Doc. #23. Trustee notes that the Elridge Property is not listed in Debtor's Schedule A/B, and Debtor did not provide evidence of his intent to reside at the Elridge Property. Schedule A/B, Doc. #20; Tr.'s Obj., Doc. #23.

In order for Debtor to properly claim a homestead exemption in the Elridge Property under C.C.P. § 704.730, Debtor must show that two things were true on the day Debtor filed his bankruptcy petition: (1) Debtor was residing in the Elridge Property; and (2) Debtor intended to continue residing in the Elridge Property. Gilman, 887 F.3d at 965-66. Based on the information provided by Debtor under penalty of perjury in Debtor's petition, Debtor did not live in the Elridge Property at the time of his bankruptcy filing. Petition, Doc. #1. Rather, Debtor lived at the Alpine Property. Id. According to Debtor's SOFA, Debtor has lived at the Alpine Property, and not the Elridge Property, for at least three years before filing his bankruptcy petition. SOFA, Doc. #20. Further, even if Debtor was residing in the Elridge Property on the petition date, Debtor, who has the burden of proof, has provided no evidence of his intent to continue residing at the Elridge Property. Thus, Debtor cannot claim a homestead exemption for the Elridge Property.

Accordingly, Trustee's objection to Debtor's claim of exemption in the Elridge Property is SUSTAINED.