

Dept. 1

Civil Law and Motion Tentative Rulings for Friday, July 26, 2024, at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

- 1. CV65344 Izzo v. Sierra Flow Fitness, Inc.**
Hearing on: N/A
Moving Party: N/A
Tentative Ruling: N/A

This is a personal injury action involving a patron who slipped and fell in defendants' parking lot after leaving a yoga class. This was to be a hearing on a motion to continue trial, reserved by one of the parties. However, no motion was ever filed, and as such this hearing is off calendar.

- 2. CVL62136 Wahr Financial Group, LLC v. Marinovich**
Hearing on: Claim of Exemption
Moving Party: Defendant Debtor
Tentative Ruling: See discussion

This is a collections case in which a judgment was rendered upon defendant's default. Before the Court this day is the continued hearing on debtor's claim of exemption.

The California Constitution mandates that the Legislature protect "a certain portion" of debtors' property from forced sale. See Cal. Const. Art. XX, §1.5). The broad purpose is to protect enough property from enforcement to enable judgment debtors to support themselves and their families, and to help shift the cost of social welfare for debtors from the community to judgment creditors. *Coastline JX Holdings LLC v. Bennett* (2022) 80 Cal.App.5th 985, 1004; *Kilker v. Stillman* (2015) 233 Cal.App.4th 320, 329. To this end, exemption laws are liberally construed in the debtor's favor. *Kono v. Meeker* (2011) 196 Cal.App.4th 81, 86; *Ford Motor Credit Co. v. Waters* (2008) 166 Cal.App.4th Supp. 1, 8.

First, there is a statutory cap on garnishment equal to 20% of a debtor's disposable earnings (which are those earnings remaining after deductions for taxes, disability, and retirement benefits). CCP §§ 706.011, 706.050; see also 15 USC §1672-1673. This is an "automatic" exception which need not be affirmatively asserted. *Sourcecorp, Inc. v. Shill* (2012) 206 Cal.App.4th 1054, 1058.

Next, the court must consider any additional carve-outs from that 20% for necessities. Debtors ordinarily claim exemption under CCP §706.051, which protects "the portion of the judgment debtor's earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family." There is no precise definition of what is necessary for the support of a judgment debtor or his or her family.

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Necessary normally includes housing costs, food, insurance, and automobile costs, but the determination of what is necessary for the support of the judgment debtor, or his family has not been subject to a precise definition and differs with each debtor. The court shall take into account all property of the judgment debtor and, to the extent the 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.

The original hearing could not proceed to the merits because creditor did not include with the motion a copy of debtor's claim of exemption. That has been cured. Based on defendant debtor's WG-006, she is unwilling to pay anything toward her debt because her monthly take-home pay from work is almost entirely consumed by ordinary monthly expenses like rent, childcare, and utilities. Some of her monthly expenses relate to the Sierra Waldorf School, which is a private elementary school. Private schooling is a luxury, not a necessity. In addition, since debtor is utilizing after school services, this Court must assume that she is working fulltime. She works at Pinocchio's sandwich shop here in town, earning the equivalent of \$16.42/hr. (based on full-time work at her stated gross wages). The new minimum wage for quick food service here in California – at least for larger companies – is \$20/hr. This debt (which is less than the jurisdictional cap for small claims' cases) could have been paid off rather quickly had debtor maximized her earning capacity. Nevertheless, there is no pending request to impute income to defendant, so based on the information provided (unnecessary school expenses, high utilities, roughly \$800 disposable, and some additional \$706.051), plaintiff-creditor shall be entitled to a wage garnishment in the amount of \$60/month, drawn in equal amounts from each paycheck.