6-30/370.00 Release if No Notice of Opposition or Notice of Hearing

The levying officer must release wages or other property of the debtor when there is an untimely filing of the Notice of Opposition to the Claim of Exemption or the Notice of Hearing and, if there is an untimely filing of either the Notice of Opposition to the Claim of Exemption of the Notice hearing, there can be no claim of exemption hearing. (Westervelt v. Robertson, 122 CA 3rd Supp. 1)

• 6-30/370.10 Earnings Withholding Order

To contest a claim of exemption based on the debtor's needs to support the debtor or the debtor's family (CCP 706.051), a judgment creditor shall file with the levying officer a Notice of Opposition to Claim of Exemption (WG-009) within the 10 days of levying officer notification of the claim of exemption. (CCP 706.105(d)). The creditor must file a Notice of Hearing on Claim of Exemption (WG-010) with the court within and notify the levying officer and the judgment debtor within the 10-day period. (CCP 706.105(e))

The hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed unless continued by the court for good cause. Both the levying officer and the debtor must be given at least 15 days notice of the hearing. After receiving the notice of hearing and before the date set for the hearing the levying officer shall file the Claim of Exemption and the Notice of Opposition to Claim of Exemption (and Financial Statement) with the court. (CCP 706.105(e))

If the levying officer does not receive a Notice of Opposition to Claim of Exemption and a Notice of Hearing on Claim of Exemption within the required 10 days, the levying officer shall serve on the employer a Notice of Modification/Termination of Earnings Withholding Order to the extent of the claim advising the employer. (CCP 706.105(f)(1), (f)(2))

Time is not extended for mailing. The specific provision takes precedence over the general provisions. (California Law Revision Commission comments to the Enforcement of Judgment Law, October 1980)

• 6-30/370.20 Direct Deposit Social Security Payment

If the judgment creditor desires to claim the amount which exceeds the automatic exemption is not exempt, the judgment creditor must file with the court a Notice of Opposition to Claim of Exemption (EJ-170) and a Notice of Hearing on Claim of Exemption (EJ-175) and file copies thereof with the levying officer within 5 days after the levying officer served the notice from the financial institution on the judgment creditor. (CCP 704.080(e)(1)) The 5 days is extended by the appropriate number of days pursuant to CCP 684.120 in a case where service on

the judgment creditor is by mail.

If the levying officer does not receive copies of the required documents timely, the officer shall release the deposit account and shall notify the financial institution. (CCP 704.080(e)(2))

• 6-30/370.30 All Other Property

To oppose a claim of exemption, the judgment creditor must file a Notice of Opposition to Claim of Exemption (EJ-170) and a Notice of Hearing on Claim of Exemption (EJ-175) with the court, and file copies of both notices with the levying officer within 15 days after the levying officer served the Notice of Claim of Exemption. (CCP 703.550(a)) The appropriate extension of time pursuant to CCP 684.120 if the judgment creditor was served by mail.

The Notice of Opposition to Claim of Exemption (EJ-170) shall the following:

- executed under oath (CCP 703.560)
- An allegation either
  - The property is not exempt under the provision of this chapter or other statute relied upon (CCP 703.560(a)(1)) or
  - The equity in the property claimed to be exempt is in excess of the amount provided in the applicable exemption (CCP 703.560(a)(2))
- A statement of the facts necessary to support the allegation (CCP 703.560(b))

If the notices and copies are timely filed, the levying officer shall promptly file the claim of exemption (and Financial Statement if required) with the court. If either or both notices and copies are not timely filed, the levying officer shall immediately release the property to the extent it is claimed to be exempt. (CCP 703.550(a))