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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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11 SHOP IRONWORKERS LOCAL 790)
12 PENSION PLAN, et al.,)
13 Plaintiffs,)
14 v.)
15 COFAB STEEL CORPORATION, et)
16 al.,)
17 Defendants.)

No. C07-2500 JSW (BZ)
**ORDER PARTLY GRANTING
PLAINTIFFS' OPPOSITION TO A
CLAIM OF EXEMPTION**

18 Plaintiffs' Motion for an Order to Determine Claim of
19 Exemption is **GRANTED** as follows:

20 Plaintiffs claim that a Writ of Execution, Notice of
21 Levy, and Memorandum of Garnishee were served on Wells Fargo
22 Bank on August 12, 2008 to reach funds in any bank accounts of
23 Charles A. Bock and Irma Bock in order to satisfy a portion of
24 the \$951,793.76 judgment entered in this action. On September
25 22, 2008, plaintiffs received the returned Memorandum of
26 Garnishee from Wells Fargo Bank, which informed plaintiffs
27 that the account was subject to an automatic exemption because
28 the funds in the account were payments authorized by the

1 Social Security Administration, and that the funds in excess
2 of the automatic exemption were being held.¹

3 A "deposit account" into which social security benefits
4 are directly deposited by the government or its agent is
5 exempt in the amount of \$4,050 (if payable to two or more
6 depositors who are the designated payees) without filing a
7 claim of exemption. Cal. Code Civ. Proc. §704.080(b)(4). Any
8 amounts in an account in excess of \$4,050 must be placed by
9 the financial institution in a suspense account (or otherwise
10 be prohibited from withdrawal), and a judgment creditor may
11 then file a notice of opposition alleging that the excess
12 funds are not exempt, as was done by plaintiffs in the case at
13 bar. Cal. Code Civ. Proc. §704.080(d).

14 At the hearing on plaintiffs' motion, plaintiffs
15 acknowledged that social security payments are directly
16 deposited into the levied account. Consequently, § 704.080 of
17 the California Code of Civil Procedure applies to this
18 action², and the "deposit account" into which social security

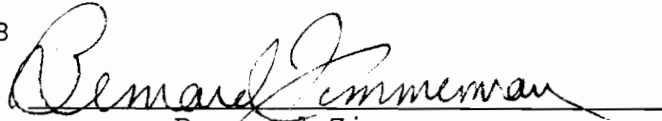
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20 ¹ Wells Fargo Bank admitted during the hearing that the
21 original amount it claimed to be holding in excess of the
22 applicable automatic exemption, totaling \$1,522.60, was a
23 clerical error, and did not accurately reflect the amounts in
24 the bank account at the time of the levy.

25 ² Plaintiffs submitted a supplemental letter brief
26 arguing that federal law (42 U.S.C. § 407) only exempts social
27 security payments from levy and citing Granger v. Harris, 207
28 WL 1213416 (E.D.N.Y. 2007) for the proposition that any funds
not exempt under federal law are subject to levy. Granger was
decided under New York law which does not appear to have an
exemption for deposit accounts such as California has, but only
for specified assets. Granger relies on a number of cases from
other states which have required a tracing process to determine
whether funds in a deposit account were exempt under federal
law. However, the exemption at issue is not created by federal
law but by California law and presumably California has chosen

1 payments are being directly deposited by the government is
2 automatically exempt from execution of a money judgment in the
3 amount of \$4,050.00.

4 In the financial records submitted by the parties, the
5 balance of the levied account on August 12, 2008, the date on
6 which the levy was executed, was \$4,692.38. Subtracting the
7 applicable automatic exemption from the balance of the account
8 on the day the Notice of Levy was served on Wells Fargo Bank
9 leaves an excess balance of \$642.38.³ Because no evidence was
10 offered by either Charles Bock or Irma Bock to support a claim
11 for exemption on these excess funds, **IT IS ORDERED** that
12 plaintiff is entitled to the remaining \$642.38.

13 Dated: October 29, 2008

14 
15 Bernard Zimmerman
16 United States Magistrate Judge

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18 EXEMPTION.wpd

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27 to exempt all funds up to \$4,050.00 in a deposit account which
28 contains social security benefits, to avoid the burden and
expense of a tracing process which the other states require.

³ At the hearing, Wells Fargo Bank agreed to waive its
usual \$100 processing fee, which would have reduced the non-
exempt sum to \$542.38, had it been applied.