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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
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13 DISH NETWORK L.L.C., *et al.*,

14 Plaintiffs,

15 v.

16 SONICVIEW USA, INC., *et al.*,

17 Defendants.

) Case No. 09-cv-1553-L(WVG)

) **ORDER RE: OCTOBER 11, 2012**
) **ORDER GRANTING PLAINTIFFS'**
) **MOTION IN OPPOSITION OF**
) **CLAIM OF EXEMPTION**

18

On October 11, 2012, the Court granted Plaintiffs' motion in opposition to judgment
19 debtor Defendant Danial Pierce's claim of exemption. (Doc. 272.) In that order, the Court
20 found that, because of the procedural defects in filing his claim, Mr. Pierce is time-barred and
21 has waived his right to make any claim of exemption with respect to the property held by the
22 Armed Forces Bank. However, the Court noted that Plaintiffs failed to provide any statute or
23 case law that show that claims of exemption to governmental-benefits funds that fall under 38
24 U.S.C. § 5301(a) or California Code of Civil Procedure § 483.013 can be waived.
25 Consequently, the Court gave Mr. Pierce the opportunity to identify specific funds in his Armed
26 Forces Bank account that are governmental benefits exempt under the aforementioned statutes,
27 and show that claims of exemption to those funds cannot be waived. Plaintiffs were also given
28 the opportunity to respond.

09cv1553

1 Mr. Pierce filed a timely supplemental response to the Court's October 11, 2012 Order.¹
2 In the response, Mr. Pierce argues that the various military-benefits funds are exempt under 38
3 U.S.C. § 5301(a), California Code of Civil Procedure § 483.013 and § 704.110, and *In re*
4 *Dalaimo*, 88 B.R. 268 (Bankr. S.D. Cal. 1988). (Pierce Resp. 1:18–26.) No legal analysis or
5 additional explanation is provided. Also, Mr. Pierce fails to lay out how much is currently in his
6 Armed Forces Bank account, and what portion of that are benefits in his brief. Rather, Mr.
7 Pierce attaches almost a dozen pages of bank records that span from July 2012 to September
8 2012 without much explanation. (See Pierce Decl. ¶¶ 4–10; Pierce Decl. Exs. 1–3.) Three
9 months of records is also hardly a complete picture of how Mr. Pierce used his Armed Forces
10 Bank account. Though Mr. Pierce vehemently denies that he commingled his governmental
11 benefits with any other funds in his Armed Forces Bank account, he concedes that at one point
12 there were deposits—albeit old deposits—into this account that were not governmental benefits.
13 (Pierce Decl. ¶ 9.)

14 In sum, Mr. Pierce fails to show that any of the funds in his Armed Forces Bank account
15 should be exempt from collection. See *Tinsley v. Bauer*, 125 Cal. App. 2d 724, 734 (1954)
16 (judgment creditor should not suffer because of the fact that assets on which it is entitled to levy
17 and assets which husband can claim as exempt are so commingled that the husband cannot
18 demonstrate exactly how much is exempt from levy).

19 **IT IS SO ORDERED.**

20
21 DATED: October 26, 2012


M. James Lorenz
United States District Court Judge

22
23 COPY TO:

24 HON. WILLIAM V. GALLO
25 UNITED STATES MAGISTRATE JUDGE

26 ALL PARTIES/COUNSEL
27

28 ¹ To date, Plaintiffs have not responded.