

FILED & ENTERED

NOV 04 2025

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Ilewis DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

Georgia K. Bode,

Debtor(s)

Georgia K. Bode,

Plaintiff(s)

v.

Robert G. Luna, Sheriff Of Los Angeles,
County; Antonio Leon; Citibank N.A.;

Defendant(s)

Case No.: 2:24-bk-19904-NB

Chapter: 11

Adv. No.: 2:24-ap-01273-NB

**MEMORANDUM DECISION DENYING
PLAINTIFF/DEBTOR'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Hearing:

Date: August 5, 2025

Time: 1:00 p.m.

Place: Courtroom 1545

255 E. Temple Street

Los Angeles, CA 90012

(or via Zoomgov per posted procedures)

For the reasons set forth below, this Memorandum Decision denies
Plaintiff/Debtor's "Motion for Summary Adjudication of Facts and Issues of Law" (aka a
motion for partial summary judgment) (adv. dkt. 74, "MSJ").

1 **1. RELEVANT BACKGROUND**

2 **a. Pre-petition events**

3 On March 21, 2024, a \$12,448,222.95 judgment ("Judgment") was entered
4 against Plaintiff/Debtor and in favor of Defendant Antonio Leon ("Judgment Creditor").
5 MSJ (adv. dkt. 74), p. 3:9-10. Plaintiff/Debtor has appealed the Judgment. *Id.*, p. 3:10-
6 11.

7 On August 8, 2024, the Los Angeles Sheriff, at Judgment Creditor's request,
8 levied on funds and investments in deposit accounts maintained in the name of
9 Plaintiff/Debtor, and/or her late husband, at JP Morgan Chase ("JPMC"), Citibank, and
10 Wells Fargo. MSJ (adv. dkt. 74), p. 3:12-15. JPMC, Citibank and Wells Fargo turned
11 over a combined total of \$1,338,683.74 in funds ("Levied Funds") to the levying officer.
12 *Id.*, p. 3:16-17. The Levied Funds did not include funds in four accounts that
13 Plaintiff/Debtor and/or her late husband held at JP Morgan Securities, LLC ("JPMS").
14 *Id.*, p. 3:18-19.

15 On August 28, 2024, Plaintiff/Debtor submitted a claim of exemption to the
16 levying officer claiming the Levied Funds fully exempt. Opp. (adv. dkt. 83), p. 6:6-7.
17 Judgment Creditor opposed Plaintiff/Debtor's claims of exemption with respect to funds
18 turned over from JPMC and Citibank. *Id.*, p. 6:8-9. On September 30, 2024, the State
19 Court ruled that \$384,143.02 of the Levied Funds held in the Citibank account were
20 exempt social security and pension funds that had to be returned to Plaintiff/Debtor
21 (MSJ (adv. dkt. 74), p. 3:20-22) and denied Plaintiff/Debtor's claim of exemption with
22 respect to funds in the JPMC account. Opp. (adv. dkt. 83), p. 6:10-13. Plaintiff/Debtor
23 has also appealed the State Court's exemption order. MSJ (adv. dkt. 74), p. 3:24-25.
24 The State Court has not made any determinations with respect to the funds in the Wells
25 Fargo account or the funds held by JPMS. *Id.*, p. 3:25-26.

26 **b. Bankruptcy Schedule C**

27 On December 4, 2024, Plaintiff/Debtor filed this bankruptcy case. On January 6,
28 2025, Plaintiff/Debtor filed Bankruptcy Schedule C (2:24-bk-19904-NB, dkt. 32).

1 Plaintiff/Debtor filed an amended Bankruptcy Schedule C on June 12, 2025 (*id.*, dkt.
2 107) and then, after filing the MSJ, filed a further amended Bankruptcy Schedule C on
3 July 16, 2025. *Id.*, dkt. 119.

4 Plaintiff/Debtor's latest Bankruptcy Schedule C (dkt. 119, PDF pp. 3-4) asserts
5 the following exemptions, among others, under the California Code of Civil Procedure
6 ("CCP") and § 522:¹

- 7 (A) JMPS account ending 945 belonging to Plaintiff/Debtor's late husband
8 ("Inherited IRA") (100% of the \$2,351,040.32 value): CCP 704.110;
9 CCP 704.225; CCP 705.115(a)(3), (b), (e); and § 522(b)(3)(C);
10 (B) JPMS [no account number is provided, but this Court presumes
11 Plaintiff/Debtor intended to claim an exemption in the account ending
12 950] ("Debtor IRA") (100% of the \$886,833.64 value): CCP 704.110;
13 CCP 704.115; CCP 704.225; and § 522(b)(3)(C);
14 (C) JPMS account ending 731 ("JMPS 731 Account") (100% of the
15 \$668,109.63 value): CCP 704.110; CCP 704.225; and § 522(b)(3)(C).

13 c. Plaintiff/Debtor's MSJ

14 Plaintiff/Debtor seeks partial summary judgment in her favor on the following
15 issues:

- 16 (A) Inherited IRA (JPMS 945): That the funds in the Inherited IRA are
17 exempt pursuant to CCP 704.110;
18 (B) Debtor IRA (JPMS 950): That the funds in the Debtor IRA are exempt
19 pursuant to § 522(b)(3);
20 (C) JPMS 731 Account: That \$564,902.02 of the funds in the JPMS 731
21 Account, plus the earnings thereon since the deposit dates of these
22 funds, are exempt pursuant to CCP sections 703.080 and 704.110 and
23 § 522(b)(3);
24 (D) DIP Account (JPMC 123): That \$132,901.48 of the funds being held in
25 a debtor-in-possession account at JPMC with an account ending in
26 123 ("JPMC 123"), which represent the combined required minimum
27 distributions ("RMD") for Plaintiff/Debtor and her late husband for 2024
28 from the Inherited IRA and Debtor IRA, are exempt pursuant to CCP
sections 703.080 and 704.110 and § 522(b)(3);
(E) Lien Avoidance: Finding any liens asserted by Judgment Creditor
against (x) the Inherited IRA and Debtor IRA, (y) the (allegedly) exempt
funds in the JMPS 731 account, and (z) the (allegedly) exempt funds in

¹ Unless the context suggests otherwise, a "chapter" or "section" ("§") refers to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Code"), a "Rule" means the Federal Rules of Bankruptcy Procedure or other federal or local rule, and other terms have the meanings provided in the Code, Rules, and the parties' filed papers.

JPMC 123 DIP account impair Plaintiff/Debtor's claimed exemptions and may be avoided under § 522(f).

This Court heard oral argument on August 5, 2025 and took the matter under submission. On August 12, 2025, Plaintiff/Debtor filed an Ex Parte Application seeking leave to file a supplemental brief addressing the parties' respective burdens of proof. Adv. dkt. 91. Judgment Creditor opposed the Ex Parte Application. Adv. dkt. 93. On August 20, 2025 this Court issued an order (adv. dkt. 94) denying the Ex Parte Application.²

2. JURISDICTION, AUTHORITY, AND VENUE

This Bankruptcy Court has jurisdiction, and venue is proper, under 28 U.S.C. §§ 1334 and 1408. This is a statutorily "core" proceeding in which this Bankruptcy Court has the authority to enter a final judgment or order under 28 U.S.C. § 157(b)(2)(A), (B), (C), (K), and (O). In addition, because all the issues raised by the parties necessarily would be decided as part of the claims allowance process, this Bankruptcy Court has the authority under the U.S. Constitution to issue a final judgment or order. *See generally Stern v. Marshall*, 131 S. Ct. 2594 (2011); *In re Deitz*, 469 B.R. 11 (9th Cir. BAP 2012) (discussing *Stern*); *In re AWTR Liquidation, Inc.*, 547 B.R. 831 (Bankr. C.D. Cal. 2016) (same).

Alternatively, the parties have expressly or implicitly consented to this Bankruptcy Court's entry of a final judgment or order. *See* adv. dkt. 45, p. 4, para. f.; *Wellness Intern. Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015) (implied consent); *and see In re Pringle*, 495 B.R. 447 (9th Cir. BAP 2013) (same).

Alternatively, regardless of whether any given proceeding is "core" or "noncore" under the statute and the U.S. Constitution, this Bankruptcy Court can issue final rulings on pretrial matters that do not require findings on disputed factual issues. That includes

² Since this matter was taken under submission this Court has continued this matter several times, not because it is extraordinarily complex (it is not), but because of personal family medical/hospital issues. This Court had not anticipated the variability and severity of those issues.

claim-dispositive motions such as the MSJ. *See AWTR Liquidation*, 547 B.R. 831, 839 (citing authorities).

3. LEGAL STANDARDS FOR MSJ

Under Rule 56(c) (Fed. R. Civ. P., incorporated by Rule 7056, Fed. R. Bankr. P.), summary judgment (on all or on part of a claim) is proper when the pleadings, discovery, and affidavits show that there is “no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” As the moving party, Plaintiff/Debtor “bears the [initial] burden ... to demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (emphasis added). On an issue for which the nonmoving party will have the burden of proof at trial, the moving party carries its burden of proof by pointing out “that there is an absence of evidence to support the nonmoving party’s case.” *Id.* at 325.

If Plaintiff/Debtor meets that initial burden, the burden can shift back and forth. *See* Rule 56(c) & (d) (Fed. R. Civ. P., incorporated by Rule 7056, Fed. R. Bankr. P.); *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1103 (9th Cir. 2000). (“If ... a moving party carries its burden of production, the nonmoving party must produce evidence to support its claim or defense”) (citation omitted). Whether a “genuine” dispute of material fact is presented must be determined by asking if “a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, at 248 (1986).

On a motion for summary judgment, the court must “view the evidence in the light most favorable to the nonmoving party to determine whether there are any genuine issues of material fact and whether the moving party is entitled to judgment as a matter of law.” *County of Tuolumne v. Sonora Community Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001). Additionally, the party moving for summary judgment may not “use a summary judgment motion as a substitute for discovery,” and therefore, unless and until there has been an adequate opportunity for discovery, “[a] moving party may not require

1 the nonmoving party to produce evidence supporting its claim or defense simply by
2 saying that the nonmoving party has no such evidence.” *Nissan*, 210 F.3d 1099, 1105.

3 **4. BURDENS OF PROOF APPLICABLE TO THE CLAIMS**

4 A claimed exemption is “presumptively valid.” § 522(l); *see also In re Carter*, 182
5 F.3d 1027, 1029 & n.3 (9th Cir. 1999). Generally, once an exemption has been
6 claimed, “the objecting party has the burden of proving that the exemptions are not
7 properly claimed.” Rule 4003(c) (Fed. R. Bankr. P.). “Initially, this means that the
8 objecting party has the burden of production and the burden of persuasion.” *Carter*, 182
9 F.3d 1027, 1029 & n.3. “If the objecting party can produce evidence sufficient to rebut
10 the presumption of validity, then the burden of production shifts to the debtor to provide
11 unequivocal evidence to demonstrate that the exemption is proper.” *Id.* The general
12 rule, however, is that the burden of persuasion always remains with the objecting party.
13 *Id.*

14 Notwithstanding the foregoing general rules, this Court is still bound by the
15 standard rule of statutory construction that the specific prevails over the general. In
16 keeping with that rule of construction, this Court has already determined that, because
17 California has “opted out” of the federal exemption scheme, and because CCP section
18 703.580(b) places the burden of proof on the party claiming the exemption,
19 Plaintiff/Debtor bears the burden to prove that she is entitled to assert any California
20 exemptions, including CCP 704.110. *See* Opp. (adv. dkt. 83), pp. 7:22-8:15 (citing *In re*
21 *Tallerico*, 523 B.R. 774, 780-91 (Bankr. E.D. Cal. 2015); *In re Diaz*, 547 B.R. 329, 336-
22 37 (9th Cir. BAP 2016); *Childs v. Gladstone*, 2019 WL 4849170, at *4 (S.D. Cal. Oct. 1,
23 2019); *In re Nolan*, 2021 WL 528679, at *3 & *8-9 (C.D. Cal. Feb. 12, 2021), *aff’d sub*
24 *nom. Matter of Nolan*, 2022 WL 327927, at *2 (9th Cir. Feb. 3, 2022)).

25 Additionally, although section 522(b)(3)(C) is a federal exemption arising under
26 the Bankruptcy Code, as to which the allocation of the burden of proof normally would
27 be governed by section 522(l) and Rule 4003(c), the more specific provisions of section
28 522(b)(3)(C) and (b)(4) apply. In relevant part those statutory provisions require

1 Plaintiff/Debtor to show that asserted retirement funds are held in “a retirement fund that
2 has received a favorable determination” under the Internal Revenue Code (section
3 522(b)(4)(A)) or, alternatively, “demonstrate” that various statutory preconditions are
4 satisfied (section 522(b)(4)(B)). Plaintiff/Debtor concedes that she bears the burden of
5 proof under section 522(b)(3). Reply (adv. dkt. 88), p. 5:13-15.

6 More specifically, as to section 522(b)(4)(A), a retirement fund is presumed to be
7 exempt “if the fund has received a favorable determination under section 7805 of the
8 Internal Revenue Code of 1986 and that determination is in effect when the petition is
9 filed.” Implicit in the language of this section is that if a debtor presents evidence
10 demonstrating that a fund has “received a favorable determination under section 7805
11 of the Internal Revenue Code of 1986 [‘IRC’] and that determination is in effect when
12 the petition is filed,” then the fund will be presumed to be exempt for purposes of
13 522(b)(3)(C). See § 522(b)(4)(A); see also *In re Bennett*, 2013 Bankr. LEXIS 3660, *28
14 (“To obtain the presumption [under 522(b)(4)(A)], there must be evidence of a favorable
15 determination letter”); *In re Trawick*, 497 B.R. 572, 585 (Bankr. C.D. Cal. 2013) (Kwan,
16 J.) (debtor bears the burden of proof under 522(b)(3)(C) & (4)); *In re Pomeroy*, 2016
17 Bankr. LEXIS 2358, at *30-31 (Bankr. E.D. Cal. June 21, 2016) (retirement plan was
18 presumed to be exempt under § 522(b)(4)(A) after reviewing evidence submitted by the
19 debtor which established, among other things, that the subject fund had received a
20 favorable determination under section 7805 of the IRC).

21 Under section 522(b)(4)(B), if no such favorable determination has been
22 received, a fund may be determined to be exempt “if the debtor demonstrates that (i) no
23 prior determination to the contrary has been made by a court or the Internal Revenue
24 Service [‘IRS’], and (ii)(I) the retirement fund is in substantial compliance with the [IRC],
25 or (II) the retirement fund fails to be in substantial compliance with the [IRC] and the
26 debtor is not materially responsible for that failure.” § 522(b)(4)(B)(i)&(ii) (emphasis
27 added). Under the plain language of section 522(b)(4)(B) Plaintiff/Debtor bears the
28 burden of proof under that section.

1 For the reasons set forth above, Plaintiff/Debtor bears the burden of proof on all
2 issues for purposes of the MSJ. Of course, the burden can shift back and forth: if
3 Plaintiff/Debtor provides sufficient evidence to meet her initial burden then the burden is
4 on Judgment Creditor to rebut that evidence with his own evidence, and if he does so
5 then the burden shifts back to Plaintiff/Debtor, and so on.

6 **5. ANALYSIS**

7 **a. Inherited IRA: Plaintiff/Debtor has failed to show the absence of a** 8 **genuine dispute of material fact that the funds are exempt under CCP** 9 **704.110**

10 Plaintiff/Debtor seeks a determination that the funds in the Inherited IRA are
11 exempt from collection under CCP 704.110. Pursuant to the Public Retirement Benefits
12 Exemption set forth in CCP 704.110(b), “[a]ll amounts held, controlled, or in process of
13 distribution by a public entity derived from contributions by the public entity or by an
14 officer or employee of the public entity for public retirement benefit purposes, and all
15 rights and benefits accrued or accruing to any person under a public retirement system
16 are exempt”

17 In support of the MSJ, Plaintiff/Debtor has submitted disbursement letters
18 demonstrating that a qualifying public entity disbursed \$681,273.01 and \$726,432.72 in
19 funds to Plaintiff/Debtor’s late husband on December 3, 2014. O’Keefe Decl. (adv. dkt.
20 75), Ex. 5, PDF pp. 21-22. She has also submitted (w) partial account statements from
21 an account ending in 583 at JPMS for December 2018, January 2019, and May 2019,
22 (x) account statements from an account ending in 898 at JPMS for August-November
23 2019, (y) an “Investment Account Application,” “Traditional IRA Adoption Agreement”
24 and a “Proposal Summary” with JPMS dated October 29 2019, and (z) account
25 statements from the Inherited IRA (JPMS 945) for November and December 2019,
26 January 2022, December 2022, December 2023, and December 2024. *Id.*, Ex. 6-16,
27 PDF pp. 108-186. Finally, her declaration states that she and her husband took the
28 disbursement check from Mr. Bode’s employer to JPMS and initially deposited the funds

1 into a newly opened IRA account at JPMS (but she does not provide the account
2 number) and later transferred the funds to Merrill Lynch for a period of months before
3 transferring the funds back to JPMS in 2018. Bode Decl. (adv. dkt. 79), p. 4:1-9.

4 Judgment Creditor contends that genuine issues of material fact exist as to
5 whether the funds in the Inherited IRA are entirely exempt and argues that
6 Plaintiff/Debtor has failed to submit evidence tracing the funds from her late husband's
7 employee retirement plans into the Inherited IRA. Opp. (adv. dkt. 83) pp. 12:20-16:22.
8 He argues that, without this evidence, there are genuine issues of material fact as to
9 whether the funds were ever comingled with non-exempt funds, particularly in view of
10 Plaintiff/Debtor's testimony that the funds were transferred in and out of different bank
11 accounts before being deposited into the Inherited IRA. *Id.*, pp. 13:27-15:12. He also
12 points out that he has not had a full opportunity for discovery.

13 Plaintiff/Debtor's evidence does not sufficiently trace the initial disbursements
14 (*i.e.*, the \$681,273.01 and \$726,432.72) into the Inherited IRA as required by CCP
15 703.080(b). As a preliminary matter, although none of the cases cited by
16 Plaintiff/Debtor in her reply brief (adv. dkt. 88, p. 6:4-19) addresses whether a debtor
17 can rely on testimonial evidence in the form of her own declaration to "fill in the gaps" in
18 evidence for purposes of CCP 703.080(b) and 704.110(b), this Court is persuaded that
19 this is permissible. Nothing in the statutes or any decisions cited by the parties specify
20 that all evidence must be in writing, and Plaintiff/Debtor cites general authority to the
21 contrary. Particularly when bank records allegedly are missing, this Court is persuaded
22 that such testimony can be presented at trial. Of course, any such testimony will be
23 subject to any objections as to the credibility or weight of the evidence, or any other
24 objections or rebuttal.

25 In other words, Plaintiff/Debtor's declaration might be sufficient evidence to carry
26 her burden at trial, but not to grant summary judgment in her favor. Her testimony must
27 be subject to possible rebuttal through discovery and cross-examination at trial.
28 Especially in view of Plaintiff/Debtor's evidence showing that the funds were transferred

1 into and out of various accounts (adv. dkt. 79, p. 4:6-9), material disputes exist as to
2 (x) whether the funds in the Inherited IRA originated entirely from distributions from
3 public retirement benefits, and (y) whether the funds were ever co-mingled with any
4 non-exempt funds.

5 Plaintiff/Debtor has failed to establish the absence of a genuine dispute that she
6 is entitled to exempt the funds in the Inherited IRA.

7 **b. Debtor IRA: Plaintiff/Debtor has failed to show the absence of a genuine**
8 **dispute of material fact that the funds are exempt under section**
9 **522(b)(3)(C)**

10 Plaintiff/Debtor seeks a determination that the funds in the Debtor IRA are
11 exempt from collection under section 522(b)(3)(C). Section 522(b)(3)(C) allows debtors
12 in opt-out states, such as California, to exempt “retirement funds to the extent that those
13 funds are in a fund or account that is exempt from taxation under section 401, 403, 408,
14 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.” § 522(b)(3)(C). For
15 funds to be exempt under § 522(b)(3)(C), the funds must satisfy two conditions. *Clark*
16 *v. Rameker*, 573 U.S. 122, 131 (2014). First, the funds must be “retirement funds.” *Id.*
17 Second, the retirement funds must be held in an account that is exempt from taxation
18 under one of the provisions of the IRC set forth therein. *Id.*

19 **(i) Material disputes exist regarding whether the funds in the Debtor**
20 **IRA are qualifying “retirement funds” and are fully exempt**

21 As to the first condition (that the funds must be “retirement funds”), the
22 Bankruptcy Code does not define “retirement funds,” so the Supreme Court has
23 explained that “retirement funds” are “sums of money set aside for the day an individual
24 stops working.” *Clark v. Rameker*, 573 U.S. 122, 127. “[T]o determine whether funds in
25 an account qualify as ‘retirement funds,’ courts should not engage in a case-by-case,
26 fact-intensive examination into whether the debtor actually planned to use the funds for
27 retirement purposes as opposed to current consumption.” *Id.* Instead, courts should
28 “look to the legal characteristics of the account in which the funds are held, asking

1 whether, as an objective matter, the account is one set aside for the day when an
2 individual stops working.” *Id.* In other words, this Court must determine whether the
3 “funds held in such accounts are not objectively set aside for the purpose of retirement.”
4 *Id.* at 128.

5 Of course, when funds originated in one account and have been transferred to
6 another, this Court must look at the legal characteristics of each account. In other
7 words, unlike *Clark*, which involved a single inherited IRA, this case involves transfers of
8 funds among multiple accounts. There are ambiguities about possible commingling with
9 funds that had been deposited from non-retirement accounts or that could have been
10 deposited in violation of the restrictions on retirement accounts.

11 In any event, the Supreme Court (573 U.S. 122, 128) listed three
12 characterizations that might aid in this evaluation:

- 13 (1) Whether the debtor may invest additional money in the account;
- 14 (2) Whether the debtor is required to withdraw money from the account
15 within a particular time, no matter how many years they may be from
16 retirement age; and
- (3) Whether the debtor may withdraw the entire balance of the account at
any time for any purpose without penalty.

17 Neither party has directly addressed whether the Debtor IRA or any predecessor
18 accounts into which the funds were deposited or withdrawn have any of the foregoing
19 characteristics, or any other legal characteristics that would help to establish, as an
20 objective matter, whether the funds in each account were “set aside for the day when an
21 individual stops working.” *Clark*, 573 U.S. 122, 127. The burden is on Plaintiff/Debtor to
22 establish that they were. Accordingly, at least on the present record, material disputes
23 exist as to whether the funds deposited into the Debtor IRA, and all predecessor
24 accounts, qualify as “retirement funds.”

25 Without more evidence or a trial at which to assess the credibility of witnesses
26 and the persuasiveness of the partial evidence in the present record, it is not clear
27 (x) whether the funds in the Debtor IRA or any predecessor accounts were properly
28 transferred via direct transfer or a tax-free rollover distribution each time Plaintiff/Debtor

1 moved the funds into a new account for purpose of retaining their tax-exempt status,
2 (y) whether Plaintiff/Debtor's yearly contributions exceeded applicable statutory limits or
3 otherwise violated IRS rules and regulations that would disqualify some or all of the
4 funds from being tax exempt, or (z) whether Plaintiff/Debtor has complied with any other
5 applicable requirements necessary to maintain exemption eligibility. *See, e.g., In re*
6 *Patrick*, 411 B.R. 659, 665 (Bankr. C.D. Cal. 2008) (Mund, J.) ("if a direct transfer or
7 rollover distribution does not comply with the applicable IRC provisions 'to the extent
8 allowed by law,' the funds may cease to qualify for exemption from the bankruptcy
9 estate"); *In re Ponte*, 658 B.R. 170, 177 (Bankr. N.D. Cal. 2024) ("because the excess
10 contribution is not exempt from taxation from the time they were deposited into the
11 Personal IRA, such funds do not qualify for exemption under the Bankruptcy Code")
12 (citations omitted). Put differently, it is possible that some of the funds in the Debtor IRA
13 are exempt while other funds are not, so Plaintiff/Debtor has failed to establish the
14 absence of a genuine dispute that the funds in the Debtor IRA are qualifying "retirement
15 funds" and are fully exempt.

16 **(ii) Material disputes exist regarding whether the funds are in a**
17 **qualifying account that is exempt from taxation**

18 As to the second condition (that the funds are in a qualifying retirement account),
19 there are two ways for a debtor to demonstrate that a retirement fund is properly
20 claimed as exempt, as noted above.

21 First, a retirement fund is "presumed to be exempt from the estate" under section
22 522(b)(4)(A) "if the retirement funds are in a retirement fund that has received a
23 favorable determination section 7805 of the Internal Revenue Code ("IRC") of 1986 and
24 that determination is in effect when the petition is filed." The presumption is rebuttable.
25 *In re Ortiz*, 558 B.R. 25, 33 (Bankr. D. P.R. 2016).

26 Alternatively, even if the fund has not received a favorable determination, it may
27 be exempt "if the debtor demonstrates that (i) no prior determination to the contrary has
28 been made by a court or the [IRS], and (ii)(I) the retirement fund is in substantial

1 compliance with the [IRC], or (II) the retirement fund fails to be in substantial compliance
2 with the [IRC] and the debtor is not materially responsible for that failure.”

3 § 522(b)(4)(B)(i)&(ii).

4 Neither party has referenced or analyzed the applicability of section 522(b)(4)(A)
5 and (B) in their papers. Plaintiff/Debtor simply contends that there is no material dispute
6 that the Debtor IRA is a qualifying account by referencing the “Traditional Individual
7 Retirement Account” application she submitted to JPMS (O’Keefe Decl. (adv. dkt. 75),
8 Ex. 17 at PDF pp. 188-203) and arguing that this Court can take judicial notice of the
9 fact that JP Morgan Chase Bank, N.A., is the largest bank in the world, and JPMS is a
10 billion-dollar subsidiary thereof. Reply (adv. dkt. 88), p. 5:15-19.

11 But the JPMS IRA Application is insufficient to establish that the funds in the
12 Debtor IRA are presumed exempt for purposes of section 522(b)(4)(A) because, so far
13 as this Court can tell, nothing in the application indicates that the IRS has determined
14 that the plan conforms to the requirements of IRC section 401(a). *See In re Daniels*,
15 452 B.R. 335, 347 (Bankr. D. Mass. 2011) (“According to the IRS Publication 794, titled
16 ‘Favorable Determination Letter,’ a favorable determination letter ‘indicates that, in the
17 opinion of the IRS, the terms of the plan conform to the requirements of [Internal
18 Revenue Code] section 401(a)’”); see also www.irs.gov/pub/irs-pdf/p794.pdf (last
19 viewed 11/4/25).

20 Nor has Plaintiff/Debtor presented any evidence, for purposes of section
21 522(b)(4)(B), from which this Court could find that “the debtor [has] demonstrate[d] that
22 (i) no prior [adverse] determination has been made by a court or the [IRS] [*i.e.*, no
23 determination that the Debtor IRA is disqualified from tax exempt status], and (ii)(I) the
24 retirement fund is in substantial compliance with the [IRC], or (II) the retirement fund
25 fails to be in substantial compliance with the [IRC] and the debtor is not materially
26 responsible for that failure.” § 522(b)(4)(B)(i)&(ii) (emphasis added).

27 Accordingly, Plaintiff/Debtor’s failure to present any evidence establishing that
28 the Debtor IRA satisfies section 522(b)(4)(A) or (B) precludes entry of summary

1 judgment in debtor's favor. See, e.g., *In re Trawick*, 497 B.R. 572, 585 (Bankr. C.D.
2 Cal. 2013) (Kwan, J.).

3 **(iii) Conclusion as to the Debtor IRA and section 522(b)(3)(C)**

4 Plaintiff/Debtor has failed to show the absence of a genuine dispute of material
5 fact that the funds in the Debtor IRA are exempt under section 522(b)(3)(C).

6 **c. JPMS 731 Account: Plaintiff/Debtor has failed to show the absence of a**
7 **genuine dispute of material fact**

8 For the reasons stated in parts "(5)(a)" and "(5)(b)" of this Memorandum
9 Decision, Plaintiff/Debtor has failed to show the absence of a genuine dispute of
10 material fact regarding the required minimum distributions in the JPMS 731 Account.
11 That is because, if any of the funds in the Inherited IRA or Debtor IRA did not qualify for
12 exemption prior to distribution out of those account, there is a genuine issue about
13 whether any distributions received from those accounts are exempt under CCP section
14 704.110 or § 522(b)(3).

15 **d. DIP Account: Plaintiff/Debtor has failed to show the absence of a**
16 **genuine dispute of material fact**

17 For the reasons stated in parts "(5)(a)" and "(5)(b)" of this Memorandum
18 Decision, Plaintiff/Debtor has failed to show the absence of a genuine dispute of
19 material fact regarding the required minimum distributions in the DIP Account because if
20 some or all of the funds in the Inherited IRA or Debtor IRA do not qualify for exemption,
21 then any distributions made on account of those funds would also be disqualified from
22 being exempt under CCP section 704.110 or § 522(b)(3).

23 **e. Lien avoidance: Plaintiff/Debtor has failed to show the absence of a**
24 **genuine dispute of material fact**

25 For the reasons stated in parts "(5)(a)" through "(5)(d)" of this Memorandum
26 Decision, Plaintiff/Debtor has failed to show the absence of a genuine dispute of
27 material fact establishing that she is entitled to turnover of the disputed funds, based on
28

1 her assertion that those funds are exempt and therefore that Judgment Creditor's liens
2 may be avoided under § 522(f).

3 **6. CONCLUSION**

4 For the reasons set forth above, Plaintiff/Debtor has failed to carry her burden of
5 proof to show the absence of any genuine disputes of material fact (x) that the funds in
6 the Inherited IRA, Debtor IRA, JPMS 731 Account, and DIP Account are exempt or (y)
7 that she is entitled to turnover because Judgment Creditor's liens impair her
8 exemptions.

9 Additionally and alternatively, even if Plaintiff/Debtor had carried her initial
10 burdens of proof (she has not), it would be improper for this Court to grant partial
11 summary adjudication at this time because Judgment Creditor has not been given an
12 adequate opportunity to conduct discovery to obtain evidence with which to support his
13 claim(s) and/or defense(s).

14 This Court will issue a separate order denying the MSJ.
15
16
17
18
19
20
21
22
23

24 Date: November 4, 2025

25 
26 _____
27 Neil W. Bason
28 United States Bankruptcy Judge