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2 **NOT FOR PUBLICATION**

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7 CLERK U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

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10 UNITED STATES BANKRUPTCY COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
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13
14 In re

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16 THERESA E. JONES,

17 Debtor.

Bankruptcy No. 06-03817-JM7

MEMORANDUM DECISION

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20 I

21 Theresa E. Jones ("Debtor"), included in her bankruptcy
22 schedules an annuity with All State valued at \$50,000. She claimed
23 it as exempt under Cal.C.Civ.Proc. § 704.115(a)(1), which provides
24 an exemption for private retirement benefits. The Trustee objected
25 to the claim of exemption because the annuity is not a private
26 retirement fund or benefit, it is an ordinary annuity trust. After
27 a hearing on April 12, 2007, the matter was taken under submission.
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1 As requested by the Court, the parties submitted supplemental
2 briefs on May 30 and 31. After considering the arguments,
3 declarations and briefs submitted in this case, the Trustee's
4 objection is sustained, for the reasons set forth below.
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8 II

9 FACTS

10 The Debtor is a 62 year old disabled widow. She had a back
11 injury in 1985 and has been disabled since 1992. She has had
12 several back surgeries. She has applied for disability more than
13 once, but the applications were all denied. The last one is on
14 appeal. She is in constant pain and uses fourteen different
15 medications for relief.
16

17 The Debtor purchased the annuity at issue in 1994, when she
18 was 49. She used the proceeds of certificates of deposits she
19 inherited from her husband to fund the annuity. Due to her
20 circumstances, she has drawn on it as her primary income source
21 since that time, and expected to draw from the annuity until the
22 year 2010, when she will be eligible for a larger payment from her
23 social security benefits. The Debtor declared that she purchased
24 the annuity based on advice from a financial planner, she intended
25 to use the annuity for her retirement, and she needs the money to
26 meet her expenses.
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1 III

2 DISCUSSION

3 The Debtor contends that the annuity falls within the scope
4 of Cal.C.Civ.P. § 704.115. That Section exempts private retirement
5 plans, and includes a definition;

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7 a) As used in this section, "private retirement
plan" means:

8 (1) Private retirement plans, including, but
9 not limited to, union retirement plans;

10 (2) Profit-sharing plans designed and used for
retirement purposes;

11 (3) Self-employed retirement plans and
12 individual retirement annuities or accounts provided for
13 in the Internal Revenue Code of 1986, as amended,
14 including individual retirement accounts, qualified under
Section 408 or 408A of that code, to the extent the
amounts held in the plans, annuities, or accounts do not
exceed the maximum amounts exempt from federal income
taxation under that code.

15
16 The Court of Appeals has considered this provision. After
17 reviewing the language and the legislative history, the Court
18 concluded that "the legislature intended § 704.115(a)(1) to exempt
19 only retirement plans established or maintained by private
20 employers or employee organizations, such as unions, not
21 arrangements by individuals to use specified assets for retirement
22 purposes." In re Lieberman, 245 F.3d 1090, 1095 (9th Cir. 2001).

23
24 In the Lieberman case, the Court denied the Debtors' attempt
25 to exempt a ten year income stream from a non-compete agreement
26 created to fund their retirement when Mr. Lieberman sold his
27 business and retired at the age of sixty-five. The Bankruptcy
28 Appellate Panel has recently ruled the same way. In re Simpson,

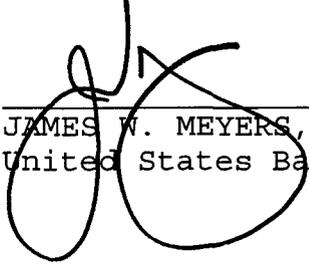
1 2007 WL 935589 (9th Cir. BAP 2007). Similarly, despite the Debtor's
2 sympathetic circumstances, she is not entitled to exempt the
3 annuity as a private retirement fund under Cal.C.Civ.Pro. §
4 704.115(a)(1).
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7 IV

8 CONCLUSION

9 The Trustee's objection to the Debtor's claim of exemption is
10 sustained. A separate order will be entered this same date.

11 DATED: JUN 01 2007

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15 JAMES W. MEYERS, JUDGE
16 United States Bankruptcy Court
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