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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 EVANDER FRANK KANE,
12 Debtor / Appellant,
13 v.
14 FRED HJELMESET, CHAPTER 7
TRUSTEE,
15 Appellee.
16

Case No. 3:23-cv-05288-WHO
Hon. William H. Orrick

**OPENING BRIEF OF APPELLEE
FRED HJELMESET**

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1 Appellee Fred Hjelmeset, Chapter 7 Trustee (“**Trustee**”) of the bankruptcy estate of Evander
 2 Frank Kane, Case No. 21-50028 SLJ, files this answering brief in the appeal commenced on October
 3 17, 2023 by Evander Frank Kane (“**Appellant**” or “**Debtor**”).

4 **I. INTRODUCTION**

5 The facts in this appeal are not in dispute. Appellant is a Chapter 7 Debtor whose San Jose
 6 residence was sold by the Appellee, Fred Hjelmeset, the Chapter 7 Trustee of the Debtor’s
 7 bankruptcy case. Following the sale, the Trustee delivered to the Debtor his homestead proceeds,
 8 \$170,350 (“**Homestead Proceeds**”), and the Debtor failed to reinvest the proceeds in another
 9 homestead within six months, as required by California Code of Civil Procedure 704.720(b)
 10 (“**Section § 704.720(b)**” or “**C.C.P. § 704.720(b)**”).

11 In August 2023, the Bankruptcy Court granted the Trustee’s Motion for Turnover of
 12 Homestead Proceeds under 11 U.S.C. § 542 and Section § 704.720(b) (“**Turnover Motion**”). ER
 13 180-187.¹ On September 15, 2023, by way of an oral ruling that the Bankruptcy Court read into the
 14 record, Judge Johnson granted the Turnover Motion (“**Oral Ruling**”). ER-218-241. On September
 15 21, 2023, the Bankruptcy Court entered its Order Granting Motion for Turnover of Homestead
 16 Proceeds (the “**Turnover Order**”). ER 215-217.

17 The Debtor has appealed the Turnover Order, asserting: (1) the six-month reinvestment
 18 requirement under C.C.P. § 704.720(b) does not apply to him; (2) the Debtor’s use of the Homestead
 19 Proceeds to pay for rent and living expenses satisfies the reinvestment requirement under
 20 § 704.720(b); and (3) the obligation to reinvest the Homestead Proceeds was tolled during the period
 21 that the Debtor appealed the Bankruptcy Court’s order that capped his claimed homestead
 22 exemption under 11 U.S.C. § 522(p).²

23 _____
 24 ¹ References in this brief to: (i) “ER-___” shall refer to the Excerpts of Record filed by the Appellant
 25 on January 22, 2024, Document 8-1; and (ii) “AER-___” shall refer to Appellee’s Excerpts of
 Record filed by the Trustee Appellee concurrent with this opening brief.

26 ² This Court affirmed the Bankruptcy Court’s ruling that limited the Debtor’s homestead under 11
 27 U.S.C. § 522(p) in *Kane v. Zions Bancorporation*, N.A. 631 F.Supp.3d 854 (N.D.Cal. 2022).

1 The Bankruptcy Court’s Oral Ruling correctly applied California law and binding Ninth
2 Circuit authorities that required the Debtor to return to the Trustee the Homestead Proceeds he failed
3 to timely reinvest. ER-218-241. The Oral Ruling provides a detailed and well-reasoned analysis, in
4 which the Bankruptcy Court carefully evaluates and considers applicable California and Ninth
5 Circuit law. Judge Johnson analyzed the same arguments that the Debtor raises in this appeal,
6 correctly rejected those arguments, and ordered the Debtor to turn over the Homestead Proceeds to
7 the Trustee. This Court should affirm the Turnover Order.

8 **II. JURISDICTIONAL STATEMENT**

9 The Turnover Order was entered on September 21, 2023. The Debtor filed his Notice of
10 Appeal of the Turnover Order to by the Bankruptcy Appellate Panel for the Ninth Circuit on October
11 2, 2023. ER-242–243. On October 3, 2023, the Trustee filed his notice of election under 28 U.S.C.
12 § 158(c)(1)(B) to have this appeal heard by the United States District Court. ER-244–245. The
13 appeal is timely. Fed. R. Bankr. P. 8002(a)(1). This Court has jurisdiction under 28 U.S.C. § 158(a).

14 **III. STANDARD OF REVIEW**

15 A debtor’s to claim an exemption is a question of law reviewed de novo. *Kane v. Zions*
16 *Bancorporation*, N.A. 631 F.Supp.3d 859 (N.D.Cal. 2022). “The bankruptcy court’s factual findings
17 regarding a claimed exemption, including a debtor’s intent, are reviewed for clear error.” *Id.* “In
18 bankruptcy actions, the federal courts decide the merits of state exemptions, but the validity of the
19 claimed state exemption is controlled by the applicable state law.” *In re Kelly*, 300 BR 11, 16 (9th
20 Cir. BAP 2003), citing *In re LaFortune*, 652 F.2d 842, 846 (9th Cir.1981).

21 The Bankruptcy Court decision concerning Appellant’s equitable tolling argument is
22 reviewed for abuse of discretion. *In re Milby*, 545 B.R. 613, 619 (B.A.P. 9th Cir. 2016) (cites
23 omitted). Abuse of discretion is demonstrated “when the record contains no evidence on which [the
24 trial court] rationally could have based that decision.” *In re Windmill Farms, Inc.*, 841 F.2d 1467,
25 1472 (9th Cir. 1988) (quoting *Hill v. United States Immigration & Naturalization Service*, 775 F.2d
26 1037, 1040 (9th Cir.1985)). A bankruptcy court abuses its discretion if it bases a decision on an
27 incorrect legal rule, or if its application of the law was illogical, implausible, or without support in
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1 inferences that may be drawn from the facts in the record. *United States v. Hinkson*, 585 F.3d 1247,
2 1262 (9th Cir. 2009); *In re Ellsworth*, 455 B.R. 904, 914 (B.A.P. 9th Cir. 2011). The lower court's
3 decision may be affirmed on any grounds supported by the record, even if not relied on by the lower
4 court. *Campbell v. Washington Dep't. of Soc. & Health Servs.*, 671 F.3d 837, 842, n.4 (9th Cir. 2011).

5 **IV. STATEMENT OF THE CASE**

6 The Debtor filed a Voluntary Petition under Chapter 7 of the Bankruptcy Code on January
7 9, 2021 ("**Petition Date**"). ER 001-073. Among the assets of the Debtor's bankruptcy estate was
8 his interest in a residence located at 2301 Richland Avenue, San Jose, California 95125
9 ("**Residence**"). The Debtor asserted a homestead exemption in the Residence in the amount of
10 \$600,000. ER 001-073. A creditor, Zions Bancorporation, N.A. ("**Zions**"), objected to the Debtor's
11 claimed homestead exemption. Following a hearing on the objection, the Bankruptcy Court issued
12 a written ruling sustaining Zions' objection, in part, and limiting the Debtor's claimed homestead
13 exemption from \$600,000 to \$170,350, pursuant to Bankruptcy Code § 522(p). ER-126-154
14 ("**Homestead Order**").

15 The Debtor appealed the Homestead Order. In 2022, this Court affirmed the Homestead
16 Order. *Kane v. Zions Bancorporation, N.A.*, 631 F.Supp.3d 854 (N.D.Cal. 2022). In 2023, as part of
17 a settlement with Zions, the Debtor dismissed his appeal of this Court's decision to the Ninth Circuit.
18 ER-179.

19 On September 23, 2021, the Bankruptcy Court authorized the Trustee to sell the Residence
20 to an overbid purchaser for \$3,430,000, pay from the sale proceeds the Debtor's homestead
21 exemption in the Residence, \$170,350 ("**Sale Order**"). ER-158-162. Pursuant to the provisions of
22 the Sale Order, the Trustee, through the sale escrow, delivered the Homestead Proceeds to the
23 Debtor on October 6, 2021. ER-163-165.

24 On or about March 16, 2022, counsel for the Trustee advised Debtor's counsel that the six-
25 month period following the Debtor's receipt of his Homestead Proceeds was April 5, 2022 and that
26 the Debtor was required, pursuant to C.C.P. § 704.720(b), to purchase a new residence within six
27 months of the receipt of the proceeds or turnover the Homestead Proceeds to the Trustee. ER-187.

1 Counsel for the Debtor, Mr. Finestone, acknowledged the pending deadline. The parties agreed,
2 without waiving any rights or defenses, that the homestead reinvestment issue would be tabled until
3 such time as the homestead appeal was resolved. Appellant’s Opening Brief, Page 5; ER-192. The
4 Debtor acquired a new residence in September 2022, well after the 6-month reinvestment deadline
5 set out in Section 704.720(b) had passed. ER-202-203.

6 In August 2023, the Trustee filed a motion under to Bankruptcy Code § 542(a) to require the
7 Debtor to turnover of the sum of \$170,350 pursuant to Section 704.720(b). ER-180-187.

8 On August 29, 2023, the Bankruptcy Court conducted a hearing on the Turnover Motion. At
9 the conclusion of the hearing, the Bankruptcy Court took the matter under submission. On
10 September 15, 2023, the Bankruptcy Court read its ruling into the record, correctly holding that: (i)
11 Section 704.720(b) required the Debtor’s turnover to the Trustee of the Homestead Proceeds due to
12 the Debtor’s failure to reinvest the proceeds within six months of his receipt (ER-222-227); (ii) the
13 Homestead Proceeds were required to be reinvested in another homestead and the proceeds could
14 not be spent on other expenses (ER-234); and (iii) the Debtor’s equitable tolling argument was
15 without merit because the Debtor had complete and unfettered control of the Homestead Proceeds
16 from October 6, 2021, and never sought a stay or filed a motion to equitably toll the time period for
17 reinvestment (ER-235).

18 **V. ARGUMENT**

19 **A. Non-Exempt Property is Subject to Turn Over Pursuant to Section 542(a).**

20
21 In a bankruptcy case, a person in possession, custody, or control of property that the trustee
22 may use, sell, or lease, may be compelled to deliver that property or its value to the trustee. 11 U.S.C.
23 § 542(a). *In re White*, 389 B.R. 693, 699 (9th Cir BAP 2008) (“Once the temporary exemption period
24 expired, the homestead sale proceeds became exposed to the trustee’s § 542(a) power to request
25 turnover of property that the trustee can use, sell, or lease under 11 U.S.C. § 363.”)
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B. Homestead Proceeds Not Reinvested Within Months Must Be Turned Over

The Debtor was obligated to turn over the homestead proceeds to the Trustee because he failed to reinvest the proceeds in another homestead within six months, as required by Section 704.720(b).

Section 704.720(b) provides, in relevant part:

If a homestead is sold under this division . . . the proceeds of sale . . . of the homestead . . . are exempt in the amount of the homestead exemption provided in Section 704.730. The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor’s spouse during that period, the proceeds thereafter are not exempt.

In California, proceeds received from a homestead are temporal in nature and lose their exempt status if not reinvested within six months of receipt. *In re Jacobson*, 676 F.3d 1193, 1198 (9th Cir. 2012) (“If the debtor does not reinvest his proceeds in a new homestead within six months of receipt, they lose their exempt status. California Code of Civil Procedure § 704.720(b).”); *In re Golden*, 789 F.2d 698, 700 (9th Cir. 1986) (“California law requires reinvestment in order to prevent the debtor from squandering the proceeds for nonexempt purposes. Acceptance of the debtor’s position would frustrate the objective of the California homestead exemption and the bankruptcy act itself, which limits exemptions to that provided by state or federal law. Applying California law, we therefore hold that when the debtor fails to reinvest homestead proceeds within a period of six months in which the debtor has control of those proceeds, the proceeds should revert to the trustee.”)

Because the Debtor did not reinvest the Homestead Proceeds within six months of his receipt, the Bankruptcy Court correctly followed binding authority and concluded that the proceeds were no longer exempt and required the money to be turned over to the Trustee. ER-221-229.

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1 **C. Section 704.720(b) Applies to Section 522 (p) Homesteads**

2 Debtor argues now (as he did before the Bankruptcy Court) that because his homestead
3 exemption was reduced pursuant to the Homestead Order, the provisions of C.C.P. § 704.720(b) are
4 not applicable. This, however, is simply not the case.

5 “When a debtor elects to claim an exemption under state law pursuant to 11 U.S.C. § 522,
6 he is required to comply with the state law in effect at the time of the filing of his bankruptcy
7 petition.” *In re Golden*, 789 F.2d 698, 700 (9th Cir. 1986). Among the state laws the Debtor is
8 required to comply with is C.C.P. § 704.720(b). *In re Jacobson*, 676 F.3d 1193, 1198 (9th Cir. 2012)
9 (“Under the so-called ‘snapshot’ rule, bankruptcy exemptions are fixed at the time of the bankruptcy
10 petition. (citation omitted). Those exemptions must be determined in accordance with the state law
11 ‘applicable on the date of filing.’ 11 U.S.C. § 522(b)(3)(A). And ‘it is the entire state law applicable
12 on the filing date that is determinative’ of whether an exemption applies. (citation omitted)”).

13 The Bankruptcy Code sets forth a set of available federal exemptions that debtors can utilize
14 and also provides an opt-out provision, where a state can require a debtor to utilize a state statutory
15 exemption schedule, as opposed to the federal exemptions. California has made such an election
16 and opted out of the federal exemption statute. *In re Jacobson*, 676 F.3d 1193, 1198 (9th Cir. 2012);
17 *Kane v. Zions Bancorporation, N.A.*, 631 F.Supp.3d at 863; Code of Civil Procedure § 703.140.

18 Notwithstanding a long history of binding authority that the Debtor’s claims of exemption
19 are controlled by all state law at the time of the filing, the Debtor argues that because his homestead
20 exemption was capped by the Homestead Order, Section 704.720(b) is not applicable because the
21 Homestead Proceeds are now singularly governed by the Bankruptcy Code, and not state law. “The
22 Bankruptcy Court erred in holding that it could apply the federal statute to override California law
23 as to the amount of the exemption, but then apply a portion of the same California statute to require
24 its reinvestment.” Docket 7, page 19. The Debtor’s understanding is wrong.

25 When California amended its homestead exemption laws and greatly increased the amount
26 of the available homestead exemption from a maximum of \$175,000 to \$600,000 (effective January
27 1, 2021), it could have also amended C.C.P. § 704.720(b). It, however, did not. This is instructive,
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1 as the state legislature could have modified or eliminated Section § 704.720(b) in light of the reduced
2 homestead exemption that can apply under Bankruptcy Code. *c.f.* Bankruptcy Code Section 522(p)
3 and (q).

4 However, the state legislature did nothing and C.C.P. § 704.720(b) remains applicable and
5 binding on the Debtor more than three years after the legislature materially modified C.C.P.
6 § 704.730. The application of the six-month reinvestment requirement is consistent with applicable
7 Ninth Circuit law. *In re Jacobson*, 676 F.3d 1193, 1198 (9th Cir. 2012) (Requiring a debtor to
8 reinvest his homestead proceeds within six months of receipt).

9 “The Ninth Circuit has held that where state exemption laws condition or limit the exempt
10 status of property in ways that are more or less generous than the federal exemptions, such
11 conditions or limitations must be respected. *Golden*, 789 F.2d at 700.” *In re Konnoff*, 356 B.R. 201,
12 205 (9th Cir BAP 2006) (applying Arizona’s 18-month homestead exemption claw back statute).³

13 Of course, states do not have a *carte blanche* to place unlimited
14 restrictions on exemptions; if the exemptions directly conflict with
15 the Code, then the Code prevails. [cite omitted]. But there is nothing
16 in the Code that prohibits a state from imposing a time limitation as a
condition to maintaining the exempt status of certain property.

17 *In re Konnoff*, 356 B.R. at 206-207.

18 By allowing them to opt out of the federal exemption scheme,
19 Congress has granted states the prerogative to determine the scope of,
20 and limitations on, the exemptions their residents may claim in a
21 bankruptcy case. *Owen*, 500 U.S. at 308, 111 S.Ct. 1833; *Golden*, 789
22 F.2d at 700; *Storer*, 58 F.3d at 1128-29. Nothing in the Code prohibits
23 a state from restricting its exemptions. *Owen*, 500 U.S. at 308, 111
24 S.Ct. 1833. As long as the limitations do not conflict with the Code,
such limitations, applicable as of the petition date, must be enforced.
Nothing in the Code requires us to ‘fragment the state law’ to allow
the debtors a continued exemption in home sale proceeds after the
exemption expires under Arizona law.

25
26 ³ The California and Arizona claw back statutes are “...sufficiently parallel ... that *Golden* supplied
27 the basic answer for the Arizona exemption as well.” *In re White*, 389 B.R. 693, 701 (9th Cir BAP
2008).

1 *In re Konnoff*, 356 B.R. at 208.

2 In his Oral Ruling, Judge Johnson dismissed the Debtor's arguments that the application of
3 Bankruptcy Code § 522(p) in the Homestead Order somehow converted the Debtor's claims of
4 exemption into some type of federal exemption. ER-227. To the contrary, the Debtor remains bound
5 by the applicable state laws governing exemptions.

6 At bottom, debtor seems to be arguing that he is now relying on a
7 federal exemption, but that is not so. First, debtor's very entitlement
8 to an exemption arises solely under California law, and that is because
9 California has opted out of any exemption scheme but its own. And,
my reading of *Golden* and *Jacobson* and all the cases following them,
demonstrates that a debtor relying on state law exemptions is bound
to follow all provisions of state law.

10 To put it plainly, there is no claim of a federal exemption here. This
11 is a question of a state exemption and the application of state law.

12 ER-227

13 The Bankruptcy Court correctly applied the law and did not commit error.

14 The Debtor also asserts that the Bankruptcy Court committed reversible error by not
15 adopting his theory that once his homestead is capped by Bankruptcy Code § 522(p), C.C.P.
16 § 704.720(b) no longer applies to the Debtor. Opening Brief, Docket 7, page 16. In support of this
17 proposition, the Debtor cited several cases in which bankruptcy courts allowed debtors who filed
18 joint petitions and whose exemption claims had been capped pursuant to Bankruptcy Code § 522(p),
19 to double their claimed exemption under Bankruptcy Code § 522(m). *In re Davis*, 674 B.R. 775
20 (Bankr. W.D. Wash. 2022) and *In re Reicher*, 2023 U.S. Dist. LEXIS 59494 (C.D. Cal. 2023).

21 In these cases, the courts allowed debtors who jointly-filed their cases to double their
22 exemptions, notwithstanding the fact that applicable state law prohibited joint debtors from doubling
23 their exemptions. *See, e.g.*, C.C.P. § 703.110(a).⁴ These cases are distinguishable from the facts in

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25 ⁴ C.C.P. § 703.110(a) provides, in relevant part: "Where the property exempt under a particular
26 exemption is limited to a specified maximum dollar amount, unless the exemption provision
27 specifically provides otherwise, the two spouses together are entitled to one exemption limited to
the specified maximum dollar amount, whether one or both of the spouses are judgment debtors
under the judgment and whether the property sought to be applied to the satisfaction of the judgment
is separate or community."

28

1 the Debtor's case. In *Davis* and *Reicher*, the courts note that the provisions of Section 522(m)
2 expressly apply the exemption provisions of Section 522 separately in cases where debtors file joint
3 petitions. Hence, joint debtors whose exemptions have been reduced or otherwise capped under
4 Section 522(p) can avail themselves of the federal "doubling provision" found under Bankruptcy
5 Code § 522(m), notwithstanding the fact that state law might otherwise prohibit the doubling of joint
6 debtors' exemption.

7 Unlike the court's application of Section 522(m) in *Davis* and *Reicher*, there is no corollary
8 in Section 522 overriding or restricting the application of claw back provisions of California Code
9 of Civil Procedure § 704.720(b). The Bankruptcy Court agreed with this reasoning. ER-227. In
10 reaching this conclusion, Judge Johnson correctly relied on *In re Konnoff*, 356 B.R. 201, 205 (9th
11 Cir BAP 2006) for the proposition that "...state law exemptions may place a time limitation as a
12 condition to homestead as long as it does not conflict with the Code." The Debtor has not
13 demonstrated that the Bankruptcy Court committed reversible error.

14 **D. Debtor's Payment of Rent and Legal Fees Do Not Satisfy the Requirements of**
15 **California Code of Civil Procedure § 704.720**

16 In his Opening Brief, the Debtor makes it clear that he is asserting an automatic homestead
17 exemption in the Homestead Proceeds. Docket 7, page 25. The Debtor bears the burden to establish
18 he is entitled to an automatic homestead exemption. *Kane v. Zions Bancorporation, N.A.*, 631
19 F.Supp.3d 854, 866 (N.D.Cal. 2022). The Bankruptcy Court correctly concluded that the Debtor
20 failed to satisfy his burden. ER-233.

21 Following the Debtor's receipt of the Homestead Proceeds, he asserts that he spent in excess
22 of \$190,000 in rental payments and attorney fees related to his homestead exemption from the period
23 September 2021 through August 2022. ER-202-203. The Debtor asserts that the Bankruptcy Court
24 erroneously concluded that these expenditures were inadequate to satisfy the Debtor's reinvestment
25 of the Homestead Proceeds because the Debtor was required to acquire a new residence within six
26 months of his receipt of these proceeds. Appellant Opening Brief, Docket 7, Page 17.

1 This, however, does not accurately reflect the Bankruptcy Court’s ruling. In its Oral Ruling,
 2 the Bankruptcy Court concluded that the Homestead Proceeds were not exempt because the Debtor
 3 did not provide any evidence that he had any interest in any of the rental properties he occupied
 4 following his receipt of the Homestead Proceeds.

5 There is no factual evidence in the record, however, demonstrating
 6 that Kane had the type of legal interest in those properties that he
 7 rented that might have been subject to an enforcement action by the
 8 judgment lien creditor. Kane's declaration here simply says he paid
 9 rent. Without any evidence of a precise nature of Kane's interest, I
 10 conclude there is no way to assess if a judgment creditor might have
 11 reached Kane's interest under California law. Hence, the rental
 12 payments do not satisfy the reinvestment and a new homestead
 13 requirement of 704.720.

14 ER- 233-234. *Phillips v. Gilman (In re Gilman)*, 887 F.3d 956, 966 (9th Cir. 2018); (“[P]hysical
 15 occupancy on the filing date *without the requisite intent to live there*, is not sufficient to establish
 16 residency.” *See Diaz*, 547 B.R. [329] at 336 [(9th Cir. BAP 2016)] at 336 (emphasis added)”) *accord*,
 17 *In re Elliott*, 523 B.R. 188, 196 (9th Cir. BAP 2014); *In re Nolan*, 618 B.R. 860, 865 (Bankr. C.D.
 18 Cal. 2020) (requiring debtor to physically occupy property with evidence of intent to reside at
 19 property).

20 [t]he legislature intended to expand the scope of interests which could
 21 be homesteaded when creating the automatic homestead. The caveat,
 22 unlike the exclusion regarding leasehold interests and beneficial trust
 23 interests included in the declared homestead statute, was that the
 24 interest be subject to an enforcement lien. A judgment lien attaches to
 25 a judgment debtor’s interest in real estate, not to bare legal title. *In re*
 26 *Weilert*, 2016 WL 3771905, at *3 (9th Cir. BAP 2016) (citing *Davis*
 27 *v. Perry*, 120 Cal. App. 670, 676, 8 P.2d 514 (1932) (“The law is well
 28 settled that the lien of a judgment does not attach to a naked title but
 only to the judgment debtor’s interest in the real estate; and if he has
 no interest, though possessing the naked title, then no lien
 attaches”).”

In re Nolan, 618 B.R. 860, 866 (Bankr. CD CA 2020).

29 The Debtor’s Opening Brief cites several cases to try to establish that the Bankruptcy Court
 30 committed error when it concluded that the Debtor had failed to provide evidence that he satisfied

1 the requirements of *Gilman*, *Diaz*, *Elliott* and *Nolan* with regard to the properties he rented after he
2 received the Homestead Proceeds. Docket 7, pages 31-34.

3 The Debtor asserts that the Bankruptcy Court committed reversible error in not applying
4 Judge Mann's decision in *In re Sain* for the proposition that a debtor can use homestead proceeds
5 for payment of living expenses and that such use, during the six-month period, protects the funds
6 from losing their exempt status pursuant to § 704.720(b). *In re Sain*, 584 B.R. 325 (Bankr. S.D. Cal.
7 2018). The *Sain* decision is truly an outlier as Judge Mann acknowledged. *Sain*, 676 F.3d at 327.
8 Unlike the facts in this case, the trustee in *Sain* first refused to deliver the \$75,000 in homestead
9 proceeds to the debtor, and then, the trustee objected to the debtor's claimed homestead exemption,
10 asserting the debtor failed to reinvest the homestead proceeds.

11 The debtor in *Sain* spent in excess of \$90,000 on rent, legal fees, property taxes, and
12 homeowner association dues, while he stayed in the property. Unlike the Debtor in this appeal,
13 virtually all the \$90,000 the debtor spent was documented by admissible evidence that was provided
14 to the court. *Sain*, at 331. Judge Mann concluded that these documented expenditures were an
15 appropriate use of the debtor's homestead proceeds and overruled the trustee's objection. *Id.*

16 The *Sain* decision was careful to distinguish the facts in the case from those in *Jacobson*:

17 [Jacobson] did not make any investment in a new home at any time,
18 either before or after she received \$150,000 from a sheriff's execution
19 sale [cite omitted]. [Sain] bought his home back from Trustee and
invested more than the necessary amount in the purchase.

20
21 *Sain*, at 331. There is no authority cited by the Debtor that overrules or somehow invalidates the
22 Ninth Circuit's binding decisions which acknowledge the temporal nature of a debtor's exemption
23 in homestead proceeds, and require the Debtor to reinvest those proceeds in a new home to prevent
24 expenditures for non-exempt purposes. *In re Golden*, 789 F.2d 698, 701 (9th Cir. 1986); *In re*
25 *Jacobson*, 676 F.3d 1193, 1198 (9th Cir. 2012); *In re White*, 389 B.R. 693, 704 (9th Cir BAP 2008)
26 ("Nothing in that structure suggests that the protected sale proceeds can be used as a grubstake" ***
27 "Indeed, restrictions on use of homestead sale proceeds have, from early in their history, been

1 regarded as essential to the appropriate balance between exemption purpose and rights of
2 creditors.”)

3 Nowhere does the Debtor claim that he lacked sufficient funds to purchase a new home, or
4 that the COVID pandemic somehow impaired his ability to locate and purchase a new home by
5 April 5, 2022. Following his receipt of the Homestead Proceeds, the Debtor continued to be paid
6 handsomely by the San Jose Sharks through the date that he was suspended for an alleged violation
7 of the San Jose Sharks Covid Protocols. Following his suspension, he immediately commenced
8 playing with the Edmonton Oilers under a very lucrative contract with the Edmonton Oilers. ER-
9 202-203.

10 The Debtor failed to provide any evidence to the Bankruptcy Court to demonstrate that he
11 did anything other than merely physically occupy multiple properties after he received the
12 Homestead Proceeds. *Phillips v. Gilman (In re Gilman)*, 887 F.3d 956, 966 (9th Cir. 2018). Because
13 the Debtor has failed to satisfy his burden, he is not entitled to assert that his rental expenses
14 following the sale of the Residence constitute an appropriate use of the Homestead Proceeds.

15 The Debtor’s Opening Brief cites several new cases to seek to establish that the Bankruptcy
16 Court committed error when it concluded that the Debtor had failed to provide evidence that he
17 satisfied the requirements of *Gilman*, *Diaz*, *Elliott* and *Nolan*. Docket 7, pages 31-34.

18 The new cases relied on by the Debtor are distinguishable. In *Goodrich v. Fuentes (In re*
19 *Fuentes)*, 2015 U.S. Dist. LEXIS 192763 (C.D. Cal. Sept. 23, 2015) the Chapter 7 trustee asserted
20 that the debtor lost his claimed homestead exemption because the debtor only had a “possessory
21 interest” in his residence since he no longer owned his residence. Unlike the facts in this appeal, the
22 debtor in *Fuentes* satisfied the second element as to what constitutes a homesteadable property—
23 the intent to live in the homestead property. *Fuentes* established the requisite intent to live and
24 remain in the property, notwithstanding that he did not own the property. The Appellant failed to
25 provide any evidence of intent to live in the property and, consequently, he fails the test set forth in
26 *Gilman*, *Diaz*, *Elliott*, and *Nolan*. ER- 233-234.

1 The Debtor’s reliance on *Casserino* is also misplaced. *In re Casserino*, 379 F.3d 1069 (9th
2 Cir. 2004). In *Casserino*, the Ninth Circuit affirmed the decisions of the lower courts, concluding
3 that a debtor had a homestead interest in a residential leasehold. This was an issue of first impression,
4 according to the Ninth Circuit: Oregon courts had never addressed whether an individual could
5 assert a homestead arising out of a leasehold interest. *Casserino* 379 F.3d at 1072. Unlike Oregon
6 law, California is clear that a leasehold may constitute a property subject to a claimed homestead.
7 California Code of Civil Procedure 704.720. *In re Nolan*, 618 B.R. at 871-872. Because the
8 Appellant failed to provide any evidence that he is entitled to such a claimed homestead exemption,
9 the holding in *Casserino* does not somehow establish that the Bankruptcy Court committed
10 reversible error. ER-233-234.

11 **E. The Bankruptcy Court Correctly Concluded There is No Basis to Toll the**
12 **Reinvestment Period**

13 The Appellant asserts, incorrectly, that the Bankruptcy Court committed error by concluding
14 that the Debtor is not entitled to an extension of the Homestead Proceeds reinvestment period
15 beyond six months. This is simply not the case. In its Oral Ruling, the Bankruptcy Court cited and
16 discussed the decision in *In re Dudley*, 617 B.R. 149 (Bankr. E.D. Cal. 2020); ER-235. *Dudley*
17 involved a debtor who received his homestead proceeds, and, prior to the expiration of the six-month
18 reinvestment period, he filed a motion with the court a request to extend time to allow him to reinvest
19 the proceeds because of his inability to locate a new property. The court granted the motion. *Accord*,
20 *In re Bading*, 376 B.R. 143 (Bankr. W.D. Tex. 2007) (debtor filed a motion to extend reinvestment
21 deadline). Unlike *Dudley* and *Bading*, the Appellant never made any request for an extension of the
22 reinvestment deadline. ER-235.

23 Appellant, unlike the debtor in *Marriott*, had unfettered access and control of the Homestead
24 Proceeds awarded under the Homestead Order within a few days after the sale closed on the
25 Residence. *In re Marriott*, 427 B.R. 887 (Bankr. D. Idaho 2010). While the Debtor asserted in the
26 opposition to the Turnover Motion that his search for a new home was “hampered by circumstances
27 beyond his control” and that he “received only a portion of his claimed homestead exemption from
28

1 the Trustee” the Debtor never provided evidence that he was impeded in any way from purchasing
2 a replacement home within the six months of receiving his homestead proceeds. ER-235-236. In
3 fact, the evidence before the Bankruptcy Court was that the Debtor had a four-year contract with
4 the Edmonton Oilers which paid him \$5.125 million a year. AER-001.

5 The Bankruptcy Court did not err when it did not agree with Debtor’s tolling argument.

6 **VI. CONCLUSION**

7 The Debtor has failed to meet his burden in this appeal. The Trustee requests that the Court
8 affirm Order Turnover Order.

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10 DATED: March 4, 2024

RINCON LAW LLP

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By: /s/Gregg S. Kleiner

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