

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
Form 1. Notice of Appeal from a Judgment or Order of a  
United States District Court**

Name of U.S. District Court:

U.S. District Court case number:

Date case was first filed in U.S. District Court:

Date of judgment or order you are appealing:

Fee paid for appeal? *(appeal fees are paid at the U.S. District Court)*

Yes    No    IFP was granted by U.S. District Court

**List all Appellants** *(List each party filing the appeal. Do not use "et al." or other abbreviations.)*

Is this a cross-appeal?    Yes    No

If Yes, what is the first appeal case number?

Was there a previous appeal in this case?    Yes    No

If Yes, what is the prior appeal case number?

Your mailing address:

City:    State:    Zip Code:

Prisoner Inmate or A Number (if applicable):

Signature    Date

*Complete and file with the attached representation statement in the U.S. District Court*

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 6. Representation Statement**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>*

**Appellant(s)** (*List each party filing the appeal, do not use "et al." or other abbreviations.*)

Name(s) of party/parties:

Karl T. Anderson, Chapter 7 Trustee

Name(s) of counsel (if any):

D. Edward Hays, #162507/ehays@marshackhays.com  
Tinho Mang, #322146/tmang@marshackhays.com  
MARSHACK HAYS LLP

Address: 870 Roosevelt

Telephone number(s): Telephone: (949) 333-7777/Facsimile: (949) 333-7778

Email(s): ehays@marshackhays.com / tmang@marshackhays.com

Is counsel registered for Electronic Filing in the 9th Circuit?  Yes  No

**Appellee(s)** (*List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.*)

Name(s) of party/parties:

Steve William Nolan

Name(s) of counsel (if any):

Nathan W. Fransen  
Paul J. Molinaro  
FRANSEN AND MOLINARO LLP

Address: 4160 Temescal Canyon, Suite 306, Corona, CA 92883

Telephone number(s): Telephone: (951) 520-9684/Fax:(951-284-1089

Email(s): nfransen@fransenandmolinaro.com/pmolinaro@fransenandmolinaro.com

*To list additional parties and/or counsel, use next page.*

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*

Continued list of parties and counsel: *(attach additional pages as necessary)*

**Appellants**

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit?  Yes  No

---

**Appellees**

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

---

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

---

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*

**ORDER AFFIRMING BANKRUPTCY  
COURT'S ORDER OVERRULING TRUSTEE'S  
OBJECTION TO APPELLEE'S CLAIMED  
HOMESTEAD EXEMPTION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

IN RE: STEVE WILLIAM NOLAN

CASE NO. 5:20-cv-01496-MCS

USBC Central District of CA at  
Riverside Division, 6:19-bk-17161-SC

ORDER AFFIRMING BANKRUPTCY  
COURT’S ORDER OVERRULING  
TRUSTEE’S OBJECTION TO  
APPELLEE’S CLAIMED  
HOMESTEAD EXEMPTION

Before the Court is an appeal from the United States Bankruptcy Court (the Honorable Scott C. Clarkson, United States Bankruptcy Judge). Appellant Karl T. Anderson, Chapter 7 Trustee for Debtor Steve William Nolan’s estate, appeals from the Bankruptcy Court’s Order Overruling Anderson’s Objection to Nolan’s claimed homestead exemption. (Docket No. 28–29.) Having reviewed the Bankruptcy Court’s reasons for overruling the Appellant’s objection, that court’s decision is **AFFIRMED** for the reasons stated below.

**I. BACKGROUND**

On May 20, 1993, Appellee’s father, William B. Nolan, established a living trust (“Trust”) in his name. (Appellant Anderson’s Opening Brief, Docket No. 28,

1 16.) The Trust was amended two more times, with the third and final amendment  
2 occurring on April 28, 2012. (*Id.*) On December 6, 2016, William B. Nolan recorded  
3 a quitclaim deed transferring title of his home located in Corona, California  
4 (“Corona Property”) from himself to the Trust. (*Id.*)

5 William B. Nolan passed away on January 21, 2017, leaving behind two  
6 surviving sons, Appellee and his brother Gregory Nolan. (*Id.*) In relevant part, the  
7 Trust stated that its assets would be liquidated and distributed to the Trust  
8 beneficiaries upon the death of the Trustor. (*Id.*); *see also* Notice of Bankruptcy  
9 Appeal (“Notice”), Bankruptcy Court Order, Docket No. 1, 4–5.<sup>1</sup> Steven Nolan was  
10 the trustee at the time and, according to Appellant, “continued to reside at the  
11 Property in breach of his fiduciary duty” to liquidate the Trust as instructed.  
12 (Opening Brief 16.)

13 On July 1, 2019, Gregory Nolan filed a petition in the probate division of the  
14 Riverside County state court. (*Id.*) In doing so, Gregory Nolan sought to compel an  
15 accounting and to remove Steven Nolan as trustee (who had been serving in that  
16 role) in favor of having the probate court appoint a new one. (*Id.*)<sup>2</sup>

17 On August 15, 2019, Steven Nolan filed a chapter 7 voluntary petition in the  
18 U.S. Bankruptcy Court in Los Angeles, California. (*Id.*); Appellant’s U.S.  
19 Bankruptcy Court Docket (“USBC Docket”), Docket No. 1-1, 1. In the petition,  
20 Steven Nolan claimed the Corona Property as the address where he resided.  
21 (Opening Brief 17); Appellee’s Bankruptcy Petition (“Appellee’s Petition”),  
22 Opening Brief Appendix 1, Docket No. 21-1, 3. More specifically, he submitted a  
23

---

24 <sup>1</sup> The Bankruptcy Court’s order included the full plain language of the Trust, which read: “The  
25 Trustee shall [] distribute the remaining trust estate as herein provided . . . the Trustee shall divide  
26 the trust estate into as many equal shares as there are children of the Trustor . . . Any share  
allocated to a living child of the Trustor shall be distributed to that child, free of trust.”

27 <sup>2</sup> Appellant makes these allegations, but then later claims that the Property was “only in the  
28 process of being administered to effectuate the Father’s intent that his assets be distributed equally  
to his son.” (Opening Brief 34.)

1 Schedule C form for “The Property [He] Claimed[ed] as Exempt,” seeking a  
2 homestead exemption of \$75,000 for the “Corona Property” under California Code  
3 of Civil Procedure § 704.730. (Appellee’s Petition 18.) Title to the Corona Property  
4 has remained in the Trust’s name since William B. Nolan quitclaimed it to the Trust.  
5 (Opening Brief 17.)

6 On November 20, 2019, the Bankruptcy Court granted Gregory Nolan’s relief  
7 from the automatic stay to proceed with the state court probate action. (*Id.* at 17–  
8 18.) On December 18, 2019, the probate court issued an order removing Steven  
9 Nolan as the trustee of the Trust and made Gregory Nolan the successor trustee. (*Id.*  
10 at 18.)

11 On May 21, 2020, Appellant Trustee filed an objection to Appellee Steven  
12 Nolan’s claimed homestead exemption in the Corona Property. (*Id.*); *see also*  
13 Appendix 5 to Appellant’s Opening Brief, Notice of Motion and Motion Objecting  
14 to Debtor’s Claimed Homestead Exemption (“Objection”), Docket No. 29-5, 2.  
15 Steven Nolan opposed Trustee’s Objection on June 9, 2020. (Opening Brief 18.)  
16 Trustee replied to Steven Nolan’s opposition on June 16, 2020. (*Id.*)

17 The Bankruptcy Court held a hearing on the Trustee’s motion on June 23,  
18 2020 and subsequently took the matter under submission. (*Id.*); Bankruptcy Court  
19 Hearing Transcript (“Hearing Transcript”), Docket No. 29-10. The Bankruptcy  
20 Court entered an order overruling the Objection on July 21, 2020. (Opening Brief  
21 18.) The Bankruptcy Court designated its order for publication. (*Id.*) On July 27,  
22 2020, Appellant Trustee filed a notice of appeal with the United States District  
23 Court. (*Id.*)

## 24 **II. QUESTIONS PRESENTED ON APPEAL**<sup>3</sup>

25 1. Is the probate court exception applicable to this case?  
26 \_\_\_\_\_

27 <sup>3</sup> Appellant stated five issues on appeal, however the Court has found that the key issues can  
28 be distilled down to the following questions.

- 1
- 2 2. Did the Bankruptcy Court err in granting the exemption?
- 3 3. Did the Bankruptcy Court make improper factual findings before issuing
- 4 its order granting Debtor's homestead exemption?

### 5 **III. STANDARD OF REVIEW**

6

7 "Pursuant to 28 U.S.C. section 158(a), federal district courts have

8 jurisdiction to review appeals from Bankruptcy Court judgments and final

9 orders. A bankruptcy court's order denying an exemption is a final, appealable

10 order." *Tan Lao v. Avery*, 2017 WL 8186670, at \*3 (C.D. Cal. August 15, 2017)

11 (citing *Preblich v. Battley*, 181 F.3d 1048, 1056 (9th Cir. 1999)).

12 "The Court reviews a bankruptcy court's interpretation of state exemption

13 laws de novo, considering a matter anew, as if no decision had been rendered

14 previously." *Id.* (quoting *In re Calderon*, 507 B.R. 724, 728 (9th Cir. BAP 2014)

15 (internal quotations omitted)). A district court reviews a bankruptcy court's

16 conclusions of law de novo and its findings of fact for clear error. *In re Tsung Yu*

17 *Chien*, 2020 WL 3965031, at \*1 (C.D. Cal. April 2, 2020) (citing *In re Int'l*

18 *Fibercom, Inc.*, 503 F.3d 933, 940 (9th Cir. 2007)).

19 Pertinent to this appeal, whether Steven Nolan was properly permitted to

20 claim the homestead exemption on the Corona Property is a question of law,

21 whereas whether he continuously resided at the Corona Property or intended to

22 use it as his permanent dwelling on the petition date is a question of fact. *See*

23 *Tan Lao*, WL 8186670, at \*3 (holding that this standard applies for these

24 particular issues); *see also In re Kelley*, 300 B.R. 11, 16 (9th Cir. B.A.P. 2003)

25 ("[Q]uestions regarding the right of a debtor to claim exemptions are questions of

26 law subject to de novo review, whereas the issue of a debtor's intent is a question

27 to be reviewed under the clearly erroneous standard."). Factual findings are

28 clearly erroneous if they are "illogical, implausible, or without support in



1 inferences that may be drawn from the record.” *Tan Lao*, WL 8186670, at \*3.  
2 Similarly, findings of fact are not clearly erroneous unless the reviewing court  
3 has a definite and firm conviction that a mistake has been made. *Id.* (citing *In re*  
4 *Karr*, 278 F.App’x 741, 742 (9th Cir. 2008)) (internal quotations and marks  
5 omitted).

#### 6 **IV. DISCUSSION**

7  
8 “Substantive issues regarding the allowance or disallowance of the claimed  
9 exemption at issue are governed by California Law.” *Id.* (citing *In re Diener*, 483  
10 B.R. 196, 203 (9th Cir. B.A.P. 2012)). Furthermore, “[u]nder the California Code of  
11 Civil Procedure, a debtor in bankruptcy’s interest in his dwelling may not be sold to  
12 enforce a money judgment.” *Id.* (citing Cal. Civ. Proc. Code §§ 704.720,  
13 704.740(a)).

##### 14 **A. Bankruptcy Filing and Claimed Homestead Exemption**

15 “When a debtor files a bankruptcy petition, all of his assets become property  
16 of the estate and may be used to pay creditors, subject to the debtor’s ability to  
17 reclaim specified property as exempt.” *In re Elliot*, 523 B.R. 188, 192 (9th Cir.  
18 B.A.P. 2014) (citing *Schwab v. Reilly*, 560 U.S. 770, 774 (2010)). “Under the  
19 ‘snapshot’ rule, bankruptcy exemptions are fixed at the time of the bankruptcy  
20 petition.” *In re Jacobson*, 676 F.3d 1193, 1199 (9th Cir. 2012). The “exemptions  
21 must be determined in accordance with” 11 U.S.C. 522(b)(3)(A). *Id.* “Section  
22 522(b) permits a debtor to exempt either the property set forth in section 522(d) or,  
23 alternatively, any property that is exempt under state law ‘that is applicable on the  
24 date of the filing of the petition.’” *In re Diener*, 483 B.R. at 203 (quoting 11 U.S.C.  
25 § 522 (e)(3)(A–B)).

26 “California has elected to ‘opt out’ of the federal exemption scheme, so  
27 California residents filing for bankruptcy are limited to the exemptions afforded  
28 under state law.” *Id.* “Therefore, substantive issues regarding the allowance or

1 disallowance of the claimed exemption at issue are governed by California law.” *Id.*  
2 In California, there are two types of homesteads: declared and automatic. *Amin v.*  
3 *Khazindar*, 112 Cal.App.4th 582, 588 (2003). The declared homestead, which may  
4 be recorded, “protects the property from execution by certain creditors to the extent  
5 of the amount of the homestead.” *Id.* (citing Code Civ. Proc. § 704.920). “Because  
6 many California debtors used to fail to record these exemptions, the legislature in  
7 1974 enacted laws creating an automatic homestead exemption. *Id.* (citing Code.  
8 Civ. Proc. § 704.720). “The automatic homestead exemption is available when a  
9 party has continuously resided in a dwelling from the time that a creditors’ lien  
10 attaches until a court’s determination in the forced sale process that the exemption  
11 does not apply.” *Amin*, 112 Cal.App. 4th, at 588 (quoting *In re Mulch*, 182 B.R. 569,  
12 572 (Bankr.N.D.Cal.1995); *Webb v. Trippet* 235 Cal.App.3d 647, 651 (1991)).  
13 These two exemptions are distinct protections. *Id.*

14 ***1. Burden of Proof: FRBP 4003 And CCP § 703.130***

15 Under the Federal Rules of Bankruptcy Procedure (“Fed. Rules Bankr.  
16 Proc.”) “the objecting party has the burden of proving that the exemptions are not  
17 properly claimed.” Fed. Rules Bankr. Proc. Rule 4003(c). The bankruptcy code  
18 authorizes a debtor to exempt certain assets. 11 U.S.C. § 522(b). “A claimed  
19 exemption is ‘presumptively valid.’” *In re Green*, 2017 WL 957151, at \*7 (9th Cir.  
20 B.A.P. March 10, 2017) (quoting *Carter v Anderson (In re Carter)*, 182 F.3d 1027,  
21 1029 n.3 (9th Cir. 1999)). However, “where the state law exemption statute  
22 specifically allocates the burden of proof to the debtor, Rule 4003(c) does not  
23 change that allocation.” *Childs v. Gladstone*, WL 4849170, at \*4 (S.D. Cal. October  
24 1, 2019) (quoting *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 337 (B.A.P. 9th Cir.  
25 2016) (distinguishing the presumption outlined in *Carter* from the Supreme Court’s  
26 opinion in *Raleigh v. Illinois Dep’t of Revenue*, which was decided a year after  
27 *Carter*). In *Childs*, the court cited the *Diaz* court’s comments on *Raleigh*, stating that  
28 ‘bankruptcy does not alter the burden imposed by the substantive law.’” *Childs*, WL

1 4849170, at \*4 (quoting *Diaz*, 547 B.R. at 337 (citing *Raleigh v. Illinois Dep't of*  
2 *Revenue*, 530 U.S. 15, 20–21 (2000))). Accordingly, Appellee holds the burden of  
3 establishing the right to the exemption and, once alleged, Appellant has the burden  
4 of rebutting that claim.

## 5 **2. The Probate Exception**

6 “The probate exception to federal jurisdiction reserves probate matters to state  
7 probate courts and precludes federal courts from disposing of property in the  
8 custody of a state court.” *Goncalves By and Through Goncalves v. Rady Children’s*  
9 *Hospital San Diego*, 865 F.3d 1237, 1251 (9th Cir. 2017) (citing *Marshall v.*  
10 *Marshall*, 547 U.S. 293, 311 (2006)). “But it does not bar federal courts from  
11 adjudicating matters outside those confines and otherwise within federal  
12 jurisdiction.” *Id.* “Federal courts have jurisdiction to entertain suits to determine the  
13 rights of creditors, legatees, heirs, and other claimants against a decedent’s estate, so  
14 long as the federal court does not interfere with the probate proceedings.” *Id.*  
15 (internal quotations omitted).

16 On appeal, Appellant argues that the Bankruptcy Court’s “decision was  
17 premature and [that] the court should have deferred any ruling on the exemption  
18 until the [p]robate [c]ourt completed its adjudication regarding the [t]rust and the  
19 right of the parties in the Property[,]” because the probate exception applies.  
20 (Opening Brief 33.) Appellant, however, has not sufficiently addressed this issue in  
21 his briefing and it is unclear whether the probate exception applies here. During the  
22 Bankruptcy proceedings Appellant claimed that, “due to Debtor’s willful failure to  
23 faithfully carry out his duties as trustee of the Trust, [Gregory Nolan] filed a petition  
24 in probate court to remove [Steven Nolan] as trustee[] and the probate court entered  
25 judgment accordingly.” (Objection 9.) However, upon review, Appellant offers  
26 many conflicting statements regarding this issue.

27 On one hand, Appellant claims that the probate proceedings were instituted  
28 to administer the estate. (Opening Brief 34); *see also* Hearing Transcript 5 (“[T]he

1 probate will be determining [whether Debtor is] entitled to [claim the exemption]  
2 under the language of the trust.”). Appellant otherwise merely states that there is a  
3 removal proceeding happening in state probate court (or that has happened since the  
4 Objection). (Opening Brief 12, 16, 26); *see also* Hearing Transcript 5, 14, 17.  
5 Namely, during the hearing, Appellee referred to the probate proceedings as a  
6 removal action. (Hearing Transcript 17.) (“There was a removal action, and the  
7 probate matter is ongoing.”) On another occasion, Appellee explained that the  
8 probate action would have occurred because his brother was bringing an unlawful  
9 detainer action against him and he “wanted that to get adjudicated before bringing  
10 the objection.” (Hearing Transcript 14.) Due to COVID-19 related resource issues,  
11 however Appellant was willing to continue the Objection matter until the matter  
12 “pending on adjudication [regarding] whether the [Appellee’s] possession [of the  
13 Property] was unlawful” was resolved. (*Id.*) Accordingly, if Appellee was deemed to  
14 be detaining, he would have been ordered to vacate the property and it would be  
15 sold. (*Id.*) Appellee countered that he intended to keep the house and buy out his  
16 brother, which is evidenced by Appellee’s occupancy attestation in the Petition  
17 forms. (Hearing Transcript 22.)

18       These numerous inconsistencies strongly damage Appellant’s argument on  
19 appeal, particularly regarding the applicability of the probate exception. For the  
20 probate exception to apply, and thereby prohibit the Bankruptcy court from hearing  
21 the homestead exemption issues, the probate court must have exclusive jurisdiction  
22 over the matter. *See Goncalves*, 865 F.3d at 1252 (“[U]nless a federal court is  
23 endeavoring to (1) probate or annul a will, (2) administer a decedent’s estate, or (3)  
24 assume in rem jurisdiction over property that is in custody of the probate court, the  
25 probate exception does not apply.”).

26       Although these are nuanced issues which are related to, but distinct from, the  
27 homestead exemption laws, both Appellee and Appellant have not fully alleged the  
28 difference between the two types of exemptions. However, Appellee was able to at

1 least shift the burden to Appellant. For example, during the hearing the judge asked  
2 Appellee why he believes that § 704.910, the declared homestead exemption,  
3 “excludes beneficiaries of [a] trust.” (Hearing Transcript 23.) In response, Appellee  
4 relied on a case that identified the difference between the two types of homesteads  
5 available in California, but neglected to describe those distinctions after mentioning  
6 the case. (*See* Hearing Transcript 23–25) (“I think the more likely reason for that is  
7 identified in the *Amin v. Khazindar* case, where they explain the reason for this law  
8 to begin with.”). Instead, Appellee emphasized that, as trustee of the estate who was  
9 living there at the time he filed Bankruptcy, Appellee had “full legal control of the  
10 property” only because of his status as trustee (thereby forfeiting him the right to a  
11 homestead exemption if he is removed as trustee). (Hearing Transcript 26–27.)  
12 Earlier, however, Appellee stated that “we cited some authority in our response that  
13 seems to make it clear that residency or dwelling analysis does not require  
14 ownership.” (Hearing Transcript 17.) That statement is true as to the automatic  
15 homestead exemption. Indeed, Appellee’s brief alleged that “it is not in dispute that  
16 [Appellee] is presently, and has for many years, resided in the Property.” (Debtor’s  
17 Reply to Trustee’s Objection (“Debtor’s Reply”), Docket No. 21-6, 6.) Appellee  
18 also cited California law to establish that “[t]here is nothing that suggests 703.020  
19 requires that a claimant owns the property subject to a claim of exemption rather  
20 than merely possess it.” (*Id.*) (citing *Broadway Foreclosure Investments, LLC v.*  
21 *Tarlesson*, 184 Cal.App.4th 931, 937 (2010)). Appellant, on the other hand, argues  
22 that Appellee could not claim bare legal title to the house (because that belongs to  
23 the estate) and that his equitable interest could not suffice because it “is not the  
24 property itself.” (*Id.* at 27.) This response addresses why Appellee cannot claim a  
25 declared homestead exemption (section 704.950), but it does not address the  
26 automatic homestead (section 704.710–704.850).

27       ///

28

1 A similar problem exists regarding Appellant's response to Appellee's  
2 position. First, he cites no law to directly establish that Appellee does not own an  
3 equitable interest in the property. Instead, he cites caselaw that highlights how a  
4 debtor who holds legal title to a property solely for the benefit of another (i.e. like as  
5 a trustee), has only bare legal title and therefore cannot be exempted in the debtor's  
6 estate. (*See* Appellee's Reply to Debtor's Reply ("Trustee's Reply"), Docket No.  
7 21-7, 7.) (citing a string of cases ranging mostly from 1986 to 1991). These  
8 arguments only partially address the crux of the question presented before the court  
9 (i.e. whether Appellee's residence in the Property and his beneficiary interest in the  
10 Trust allows him to claim the automatic homestead exemption). Further, Appellant's  
11 reply neglects to acknowledge the role that Appellee's beneficiary interest in the  
12 Trust may play in allowing him to claim the exemption. (*See generally* Trustee's  
13 Reply 9.) Although Appellant cites section 704.710, he does not address Appellee's  
14 potential interest in the Trust and does not cite any law to confirm that it may not be  
15 considered an equitable interest.

16 These examples evidence both parties' neglect to fully distinguish the probate  
17 exception issues from the beneficiary interest issues. This negligence, however,  
18 primarily hurts Appellant's arguments because Appellee established that he could  
19 potentially claim the automatic exemption, which shifted the burden to Appellant to  
20 discredit that conclusion.

21 Ultimately, the Court finds that Appellant has waived the argument regarding  
22 the probate exception here. Appellant did not sufficiently argue the point during the  
23 Bankruptcy court proceedings, during his Objection pleadings, or during his  
24 Opening Brief. Appellant's objection to Appellee's claimed exemption generally  
25 references the relevant facts relating to the probate action that was ongoing at the  
26 time of the Bankruptcy Court case. (*See generally* Objection.) Otherwise, the  
27 Objection is completely silent on the applicability of the probate exception and  
28

1 Appellant’s Reply does not provide legal analysis to support its applicability.  
2 Further, Appellant merely mentioned the probate exception during the hearing  
3 without supporting any argument with caselaw authority. (Hearing Transcript 10.)  
4 (“I think this is an instance where, you know, it’s rare, but the probate exception  
5 probably applies.”).

6 “We apply a ‘general rule’ against entertaining arguments on appeal that were  
7 not presented or developed before appeal.” *In re Mercury Interactive Corp. Sec.*  
8 *Litig.*, 618 F.3d 988, 992 (9th Cir. 2010) (citing *Peterson v. Highland Music, Inc.*,  
9 140 F.3d 1313, 1321 (9th Cir. 1998)). “Ordinarily, ‘an appellate court will not hear  
10 an issue raised for the first time on appeal.’” *Kaas Law v. Wells Fargo Bank, N.A.*,  
11 799 F.3d 1290, 1293 (9th Cir. 2015) (quoting *Cornhusker Cas. Ins. Co. v. Kachman*,  
12 553 F.3d 1187, 1191 (9th Cir. 2009)). “Although no bright line rule exists to  
13 determine whether a matter has been properly raised below, an issue will generally  
14 be deemed waived on appeal if the argument was not raised sufficiently for the trial  
15 court to rule on it.” *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992  
16 (9th Cir. 2010) (internal quotations and citations omitted). “Such a waiver is a  
17 discretionary, not jurisdictional, determination.” *Id.* Courts “exercise . . . discretion  
18 to reach waived issues only in three circumstances: [1] in the exceptional case in  
19 which review is necessary to prevent a miscarriage of justice or to preserve the  
20 integrity of the judicial process, [2] when a new issue arises while appeal is pending  
21 because of a change in the law, and [3] when the issue presented is purely one of  
22 law and either does not depend on the factual record developed below, or the  
23 pertinent record has been fully developed.” *Id.* (internal quotations and citations  
24 omitted). Here, there are no facts to suggest that a miscarriage of justice or a change  
25 in the relevant law has occurred or will occur. Likewise, the beneficiary interest and  
26 related probate exception issues are not purely questions of law because, as stated  
27 above, whether the homestead exemption’s section 704.710 dwelling requirement is  
28 satisfied is a question of fact.

1           **3. California Automatic Homestead Exemption and the Bankruptcy**  
2           **Court's Findings**

3           Appellee has claimed that the “automatic” homestead exemption applies here,  
4 and that “the two necessary components” of the exemption have been met here as  
5 required under Cal. Civ. Proc. Code § 704.730. (Appellee’s Reply Brief 7.) “The  
6 automatic homestead exemption protects a debtor from a forced sale and requires  
7 that the debtor reside in the homestead property at the time of a forced sale.” *In re*  
8 *Diaz*, 547 B.R. at 334. “The filing of a bankruptcy petition constitutes a forced sale  
9 for purposes of the automatic homestead exemption.” *Id.* “The automatic homestead  
10 exemption ‘is not an absolute right to retain the homestead itself.’” *In re Fuentes*,  
11 687 Fed.Appx. 542, 544 (9th Cir. 2017). “Rather, it is a debtor’s right to retain a  
12 certain sum of money when the court orders sale of a homestead in order to enforce  
13 a money judgment.” *Id.* “California Civil Procedure Code section 704.730 provides  
14 the monetary value of a debtor’s homestead exemption, based on the debtor’s family  
15 status” and other factors. *Id.* “However, a judgment debtor’s homestead can only be  
16 sold if a ‘bid is received at a sale of [the] homestead pursuant to a court order for  
17 sale that exceeds the amount of the homestead exemption plus any additional  
18 amount necessary to satisfy all liens and encumbrances on the property.’” *Id.* (citing  
19 Cal. Civ. Proc. Code § 704.800(a)).

20           Here, Appellant argues that the Bankruptcy Court “hypothesized” when it  
21 determined that “in certain circumstances, a judgment creditor could attach a lien to  
22 a judgment debtor’s beneficial interest in property held by a trust. Property, because  
23 no jurisdiction existed for the court to do so. (Opening Brief 29.) Further, he argues  
24 that Appellee’s assumptions “that a hypothetical judgment creditor could attach a  
25 lien to Appellee’s assumed interest in the Property itself in the probate proceedings”  
26 are “not supported by the evidence and the viability of these unadjudicated claims  
27 has yet to be resolved.” (Appellant’s Reply Brief 18.) He also argues that the Court  
28 must consider whether Appellee was breaching “his fiduciary duties as trustee to sell



1 the property and distribute the proceeds to each 50% beneficiary.” (Opening Brief  
2 14.)

3 The Ninth Circuit BAP has long held that “the filing of the [bankruptcy]  
4 petition serves as both a hypothetical levy and as the operative date of the  
5 exemption.” *In re Diaz*, 547 B.R. at 335; *see also Nadal v. Mayer (In re Mayer)*,  
6 176 B.R. 186, 189 (9th Cir. B.A.P. 1994) (“[t]he filing of the petition constitutes an  
7 attempt by the trustee to levy on the property. It is this hypothetical levy the court  
8 must focus on in analyzing [the debtor’s] entitlement to a homestead exemption.”).

9 Appellant’s arguments during the hearing and in his Objection also emphasize  
10 that the Appellee’s only beneficial interest in the trust is personal property, which  
11 also is inaccurate based on his supporting evidence. The Bankruptcy Court pointed  
12 out that the plain language of the trust does not expressly require a sale or direct the  
13 trustee to liquidate the real property and divide the proceeds, instead stating that the  
14 beneficiaries will obtain “distributions.” (Notice 18.) It qualified that the personal  
15 versus real property interest distinction is pertinent to the declared homestead  
16 exemption, but “absent a clear directive from the California Supreme Court, Trustee  
17 does not show that this distinction is relevant to the *automatic* homestead statute.”  
18 (*Id.* at 9.) It further clarified that the distinction between personal and real property  
19 interests would be controlling if the court was focused on the declared homestead  
20 exemption, noting instead that it is examining the automatic exemption. (Notice 9 n.  
21 13.)

### 22 **B. The Merits of the Bankruptcy Court’s Homestead Exemption Grant**

23 The Court agrees with the Bankruptcy Court’s distillation of the issues and  
24 the fact that automatic homestead exemption discourse is what guides the question  
25 of whether Appellant’s Objection was properly denied. The Bankruptcy Court  
26 properly highlighted the importance of distinguishing the two type of homestead  
27 exemptions and held that the automatic exemption is the relevant one here (even  
28

1 though both parties neglected to draw the distinction). The Trustee’s Objection itself  
2 supports the conclusion that the automatic homestead exemption is the type of  
3 homestead exemption that applied here. Likewise, his Objection states that “a search  
4 of the county recorder’s records through its online recorder’s services shows that  
5 there is no recorded declaration of homestead.” (Objection 8.) This therefore  
6 suggests that the homestead at issue must have been an automatic one. *See Salameh*  
7 *v. Hotel*, 2017 WL 87046, at \*2 (S.D. Cal. January 10, 2017) (citing Cal. Code Civ.  
8 Proc. § 704.950) (“In order to obtain the protection under a declared homestead, the  
9 homestead declaration must be recorded prior to the date of recording of the abstract  
10 of judgment.”).

11 In discussing the automatic homestead exemption, the Ninth Circuit has  
12 historically described it as Cal. Civ. Proc. Code sections 704.710–704.810, stating  
13 that the automatic exemption “protects a debtor from a forced sale and requires that  
14 the debtor reside in the homestead property at the time of a forced sale.” (*Diaz*, 547  
15 B.R. at 334); *see also In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987) (“The  
16 statutory provisions affecting homesteads are primarily located in Article 4 (§§  
17 704.710–704.850) and Article 5 (§§ 704.910–704.995) of Title 5, Division 2,  
18 Chapter 4 of the California Code of Civil Procedure. Article 4 provides for an  
19 ‘automatic’ homestead, for which no recording is necessary. Article 5 provides for  
20 recorded declarations of homestead.”). Meanwhile, California courts have likewise  
21 recognized 704.710–704.730 as the automatic exemption by conducting statutory  
22 interpretation issues as required by California law. *See Wells Fargo Financial*  
23 *Leasing, Inc. v. D & M Cabinets*, 177 Cal.App.4th 59, 66–68 (2009) (“The issue . . .  
24 is one of statutory interpretation”) (citations and quotations omitted)(adding  
25 references to section 704.710–704.850 while explaining how “[s]ection 704.740 is  
26 part of the homestead laws.”); *see also Amin*, 112 Cal.App.4th at 588 (listing the  
27 declared exemption as Cal. Code Civ. Proc. section 704.920 and the automatic  
28 exemption as section 704.720).

1 Further, California common law has recognized that “[t]here is no  
2 requirement in section 704.710 that the judgment debtor continuously own the  
3 property, and we do not read section 703.020 to impose such a requirement.”  
4 *Broadway*, 184 Cal.App.4th at 937; *see also* Cal. Civ. Proc. § 703.020 (The statute  
5 is titled “Persons who may claim exemptions[.]”). Relatedly, “there is nothing that  
6 suggests 703.020 requires that a claimant own the property subject to a claim of  
7 exemption rather than merely possess it.” *Id.* at 322–23. “Several California cases  
8 recognize that judgment debtors who continuously reside in their dwellings retain a  
9 sufficient equitable interest in the property to claim a homestead exemption even  
10 when they have conveyed title to another.” *Id.* (citing a string of California cases  
11 ranging from 1952 to 2001). “Such a result is consistent with the purpose of  
12 California’s homestead exemption to protect one’s dwelling against creditors.” *Id.*  
13 Accordingly, section 704.710(c) “requires only that the judgment debtor *reside* in  
14 the property as his or her own dwelling at the time the judgment creditor’s lien  
15 attaches and continuously thereafter until the court determines the dwelling is a  
16 homestead.” *In re Gilman*, 887 F.3d 956, 965 (2018) (quoting *Tarlesson*, 184  
17 Cal.App.4th at 937). “It does not require that the debtor continuously own the  
18 property.” *Id.* at 965–966. (“California law rejects [the] argument that title to []  
19 property is necessary to claim a homestead exemption.”) (citing *Tarlesson*, 184  
20 Cal.App.4th at 937). “[A] third party does not defeat a debtor’s right to an automatic  
21 exemption, ‘because continuous residency, rather than continuous ownership,  
22 controls the analysis. *Id.* (citing *Elliot*, 523 B.R. at 196).

23 Here, Appellee claimed an “Equitable interest” in the Property when he filed  
24 his Bankruptcy petition and explained that title is held in a Trust to which he and his  
25 brother share equal halves of equity therein. (Bankruptcy Petition 12.) Appellee  
26 claimed the Property as exempt, cited C.C.P. section 704.730 and described the  
27 same beneficiary allocation as stated in the Trust language. (Bankruptcy Petition  
28 18.) Neither party cites any California Supreme Court cases addressing this issue,

1 and likewise the Bankruptcy Court stated during the hearing that it did not have any  
2 law on this point. (Hearing Transcript 30) (“I don’t have any California or Ninth  
3 Circuit law on point on this.”) That point is the specific question of whether  
4 Appellee’s beneficiary interest in the Trust can allow him to claim a homestead  
5 exemption in the Property.

6 Likewise, the Court has not found any California Supreme Court cases that  
7 explicitly state that Appellee’s beneficiary interest in the Trust allow him the right to  
8 claim the automatic homestead exemption in the Property (which is an asset of the  
9 Trust). Nonetheless, “when, as here, the state’s highest court has not interpreted the  
10 dispositive state law, we do our best to predict how that state’s highest court would  
11 decide the issue.” *In re Calderon*, 507 B.R. 724, 729 (9th Cir. B.A.P. 2014)  
12 (citations omitted). It is clear here that California has a long common law history of  
13 applying a liberal standard to the automatic homestead laws. *See In re Reaves*, 256  
14 B.R. 306, 310 (9th Cir. B.A.P. 2000) (quoting *In re Crosby’s Estate*, 2 Cal.2d 470,  
15 473 (1935) (“The exemption statutes are to be construed liberally, ‘for their manifest  
16 purpose is that of saving debtors and their families from want by reason of  
17 misfortune or improvidence.’”) (internal quotations omitted). Further, the record  
18 clearly shows that Appellee possessed a beneficiary interest in the trust, and that he  
19 was residing in the Property during and after the Bankruptcy proceedings.  
20 Altogether, the Court holds that these factors support a finding that he was able to  
21 claim the automatic homestead exemption.

22 **C. Appellant Did Not Satisfy His Burden to Prove that Appellee was not**  
23 **Entitled to the Automatic Homestead Exemption**

24 “Generally, a debtor’s claimed exemption is presumptively valid, and the  
25 party objecting to a debtor’s exemption has the burden of proving that the  
26 exemption is proper’ under Federal Rule of Bankruptcy Procedure 4003(c).” *In re*  
27 *Simon*, 2019 WL 3781599, \*4 (C.D. Cal. August 12, 2019) (quoting *In re Diaz*, 547  
28 B.R. at 336). “But ‘[w]here a state law exemption statute specifically allocates the

1 burden of proof to the debtor, Rule 4003(c) does not change that allocation.” *Id.*  
2 “California law places the burden of proof on ‘the party claiming the exemption.’”  
3 *Id.* “To determine whether a debtor resides in the property for homestead purposes,  
4 courts consider the debtor’s physical occupancy of the property and the intent to  
5 reside there.” *In re Gilman*, 887 F.3d at 965 (citing *Diaz*, 547 B.R. at 335 and  
6 *Ellsworth v. Marshall*, 196 Cal.App. 2d 471, 474 (1961)).

7 Appellee asserts that he had an equitable interest in the property and  
8 continuously resided there, primarily for the reasons discussed above. (Appellee’s  
9 Reply 18–19.) Appellant responds by arguing that Appellee assumed certain facts  
10 about the extent of his interest in the Property, namely that he had an interest in the  
11 Property itself and not just a right to receive a monetary distribution from the Trust.  
12 (Appellant’s Reply 18.)

13 As stated above, the Bankruptcy Court correctly concluded that Steven  
14 Nolan’s petition triggered the automatic homestead exemption. (Notice 7.) (“The  
15 automatic homestead exemption is what is at issue in this case.”). Likewise, the  
16 Bankruptcy Court correctly found that “Trustee does not refute that Debtor resides  
17 or intended to reside on the property, or address that a bankruptcy trustee, as a  
18 hypothetical creditor, may reach the Property being held in the Trust by virtue of  
19 Debtor’s beneficiary interest in the Trust.” (Notice 21.)

20 Likewise, on appeal, Appellant admitted that Appellee resided in the Property  
21 at all relevant times and still appears to be there until further notice. (Opening Brief  
22 16.) (“Upon the death of the trustor, appellee continued to reside at the property.”)  
23 (internal quotations and citations omitted). Appellee had the burden to prove his  
24 entitlement to claim the exemption. However, Appellant also had the burden to  
25 prove that the exemption should not be claimed. Since the record shows that it is  
26 uncontested that Appellee satisfied the dwelling and intention requirements, the  
27 Bankruptcy Court did not err in making such a factual finding here.

28

1           **D. The Bankruptcy Court’s Findings Were Not Clearly Erroneous**

2           Factual findings are clearly erroneous if they are “illogical, implausible, or  
3 without support in inferences that may be drawn from the record.” *Tan Lao*, WL  
4 8186670 at \*3. “Similarly, findings of fact are not clearly erroneous unless the  
5 reviewing court has a definite and firm conviction that a mistake has been  
6 made.” *Id.* (citing *In re Karr*, 278 F.App’x 741, 742 (9th Cir. 2008)).

7           Here, the Court finds that the Bankruptcy Court made sufficiently logical  
8 factual and evidentiary findings to support its order. As outlined above, the  
9 Bankruptcy Court made several findings after reviewing the record, including  
10 reviewing the parties’ briefs, holding a hearing on the Appellant’s objection to  
11 Appellee’s claimed homestead objection, asking questions where additional context  
12 was required, and listening to the arguments made by both parties. After these  
13 efforts, the Bankruptcy Court ultimately concluded that “[t]here is no express  
14 limitation on the interests of the beneficiary of a trust in the automatic homestead,  
15 which, as set forth below, is problematic for [Appellant’s] position.” (Notice 8.)  
16 Citing the Legislative Committee Comments to the automatic homestead exemption  
17 statute, Cal. Civ. Proc. Code section 704.720, it reasoned that interests of the  
18 beneficiary of a trust are included in the scope of the exemption. (Notice 8–9); *see*  
19 *also* Legislative Committee Comment to Amended Cal. Civ. Proc. Code section  
20 704.720 (West) (“[A]ny interest sought to be reached by the judgment creditor in the  
21 homestead is subject to the exemption.”). Accordingly, “a judgment creditor of a  
22 beneficiary to a trust may attach an enforcement lien to real property trust res.”  
23 (Notice 9.)

24           The Ninth Circuit has not directly ruled on this specific issue, but the  
25 Bankruptcy Court’s statutory interpretation analysis was logically supported with  
26 reference to the legislative history and related case precedent. Further, the hearing  
27 transcripts confirm that a robust discussion of these issues occurred and the  
28 Appellant himself was hesitant regarding the applicability of the probate exception

1 (saying instead that it is a “rare” instance where the exception “probably” applies).  
2 (Hearing Transcript 10.)

3 In sum, Appellant has not offered enough evidence to give the Court a  
4 “definite and firm conviction” that a mistake has been made, as required by the  
5 Ninth Circuit and its progeny. *See Karr*, 278 F.App’x at 742. If a party timely  
6 objects to a claimed exemption, it has the burden of proving that the exemptions are  
7 not properly claimed and must produce evidence to rebut the presumptively valid  
8 exemption. *In re Deiner*, 483 B.R. 196, 203 (9th Cir. B.A.P. 2012); *see also In re*  
9 *Ziegler*, 2016 WL 3267387, at \*4 (9th Cir. B.A.P. June 6, 2016) (“California has  
10 mandated the use of state exemptions and has placed the burden of proof on the  
11 party claiming the objection.”). “If the residency requirements are satisfied, a  
12 judgment debtor can claim a homestead exemption in the interest he or she has in  
13 the property, ‘regardless of whether the judgment debtor’s interest is a fee,  
14 leasehold, or lesser interest.’” *In re Fuentes*, 687 Fed.Appx. 542, 544 (9th Cir. 2017)  
15 (quoting Cal. Civ. Proc. Code section 704.820 Law Revision Commission  
16 Comments to 1982 Addition and citing *In re Elliot*, 523 B.R. 188 at 196). Appellant  
17 has not satisfied his burden on these critical points. The Bankruptcy Court followed  
18 logical steps of analysis using the evidence available on the record. Thus, the  
19 Bankruptcy Court’s factual findings were not clearly erroneous.

## 20 **V. CONCLUSION**

21 The Court will not speculate as to the probate court’s application with respect  
22 to the Bankruptcy Court’s decision to grant Appellee the automatic homestead  
23 exemption claimed in his Bankruptcy petition. Although it is apparent that the  
24 probate exception could have a decisive impact under a rare circumstance, Appellant  
25 has not fully established that the circumstance is present here. Indeed, Appellant has  
26 instead waived his probate exception theory by not sufficiently addressing the  
27 nuances during the Bankruptcy proceedings and in his appellate briefings. Further,  
28

1 the Court has independently come to the same conclusion as the Bankruptcy Court's  
2 for the remaining parts of the analysis. Lastly, the Bankruptcy Court did not make  
3 any clearly erroneous factual findings.


4 Because of these reasons, the decision to grant the claimed exemption is  
5 **AFFIRMED**. The Clerk is directed to close this case.

6

7 IT IS SO ORDERED.

8 DATED: February 12, 2021

9

  
MARK C. SCARSI  
UNITED STATES DISTRICT JUDGE

10

11

12 cc: Bankruptcy Court

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



*Karl T. Anderson v. Steve William Nolan*  
**USDC Case No. 5:20-cv-01496-MCS**

\*\*\*\*\*

**Certificate of Service**

I hereby certify that on **March 3, 2021**, I electronically filed the **NOTICE OF APPEAL FROM A JUDGMENT OR ORDER OF A UNITED STATES DISTRICT COURT** with the Clerk of the Court for the United States District Court for the Central District of California by using the CM/ECF system.

I certify that all parties of record to this appeal either are registered CM/ECF users, or have registered for electronic notice, or have consented in writing to electronic service, and that service will be accomplished through the CM/ECF system.

- **Nathan W Fransen**  
nfransen@fransenandmolinaro.com,deforest@fmattorney.com
- **D Edward Hays**  
ehays@marshackhays.com,kfrederick@ecf.courtdrive.com,cmendoza@marshackhays.com,cmendoza@ecf.courtdrive.com,ehays@ecf.courtdrive.com
- **Tinho Mang**  
tmang@marshackhays.com,kfrederick@ecf.courtdrive.com,cmendoza@marshackhays.com,tmang@ecf.courtdrive.com
- **Paul J Molinaro**  
pmolinaro@fransenandmolinaro.com,pauljmolinaro@gmail.com

I hereby certify that some of the parties of record to this appeal have not consented to electronic service. I have mailed the \_\_\_\_\_ by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days, to the following parties:

N/A

Dated: March 3, 2021

*/s/ Cynthia Bastida*  
\_\_\_\_\_  
CYNTHIA BASTIDA