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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re
JOHN M. WOODBURN,
Debtor.

DAVID A. GILL, Chapter 7 Trustee,
Plaintiff,

vs.

**JOHN M. WOODBURN; NAJILA A.
BRENT; LOS ANGELES COUNTY
SHERIFF'S OFFICE,**
Defendants.

Case No. 2:10-bk-41251-RK
Chapter 7
Adv. No. 2:12-ap-02035-RK

**MEMORANDUM DECISION RE CROSS-
MOTIONS FOR SUMMARY JUDGMENT**

The above-captioned adversary proceeding came on for hearing before the United States Bankruptcy Judge on November 13, 2012 on the cross-motions of Plaintiff David A. Gill, Chapter 7 Trustee ("Trustee"), and Defendant John M. Woodburn, Debtor, ("Debtor") for summary judgment regarding Trustee's Complaint for Turnover of Estate Funds ("Complaint"). Helen R. Frazer, of the law firm of Atkinson, Andelson, Loya, Ruud & Romo, appeared for Trustee. Barry R. Wegman, of the Law Offices of David A. Titem, appeared for Debtor. Jacqueline H. Choi, of the law firm of Steckbauer Weinhart Jaffe,

1 LLP, appeared for the Los Angeles County Sheriff's Department (the "Sheriff's
2 Department").

3 Having considered the moving and opposing papers and the arguments of the
4 parties, the court issues this memorandum decision granting the motion of Debtor for
5 summary judgment and denying the cross-motion of Trustee for summary judgment.

6 **FACTUAL BACKGROUND**

7 The facts in this adversary proceeding are uncontested by the parties as reflected
8 in the *Joint Statement of Stipulated Facts* ("*Stipulation*") filed on October 19, 2012.

9 Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy
10 Code, 11 U.S.C., on July 28, 2010. The case was converted to Chapter 7 on June 10,
11 2011, and David A. Gill was appointed as the Chapter 7 Trustee. *Stipulation*, ¶2. When
12 Debtor filed his bankruptcy petition on July 28, 2010, he owned certain real property
13 located at 2050 E. Mountain Street, Pasadena, CA 91104 (the "Pasadena Property").
14 *Stipulation* ¶1, 3. On December 15, 2010, the court granted relief from the automatic
15 stay to Creditor Najila Brent, allowing her to sell the Pasadena Property. *Stipulation*, ¶ 3.
16 The Pasadena Property was sold at an execution sale on March 16, 2011. *Stipulation*,
17 ¶ 4.

18 Prior to the execution sale of the Pasadena Property, Debtor claimed a homestead
19 exemption in the amount of \$75,000. *Stipulation*, ¶ 5. The Superior Court of California
20 for the County of Los Angeles made a ruling limiting Debtor's homestead exemption to
21 \$50,000. *Stipulation*, ¶ 6. Following the sale of the Property on March 16, 2011, the
22 Sheriff's Department held proceeds from the sale of the Property in the amount of
23 \$50,000 allocated to Debtor's homestead funds. *Id.*

24 The Sheriff's Department told Debtor that he would need to obtain an order of the
25 Bankruptcy Court for release of the homestead funds to him. *Stipulation*, ¶ 7. In his
26 complaint, Trustee alleges that Debtor had the ability and legal right to demand release of
27 these funds from the Sheriff's Department, but has declined to do so. *Complaint* at 3:4-6.

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1 On August 15, 2012, Trustee initiated this adversary proceeding by filing an
2 adversary complaint, pursuant to 11 U.S.C. § 542, seeking turnover of the funds claimed
3 by Debtor to be subject to his homestead exemption. In other words, Trustee sought the
4 amount of \$50,000 held by the Sheriff's Department attributable to Debtor's homestead
5 exemption to be turned over as property of the bankruptcy estate. In the complaint,
6 Trustee alleged that Debtor's homestead exemption expired under California Code of
7 Civil Procedure, § 704.720.

8 On September 13, 2012, Debtor filed a motion to dismiss the complaint pursuant
9 to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, incorporating by
10 reference Rule 12(b)(6) of the Federal Rules of Civil Procedure, asserting that Trustee
11 was not entitled to a turnover of the homestead funds. In the motion to dismiss, Debtor
12 stated that he did not dispute the facts alleged in the Complaint, but contended that these
13 factual allegations failed to state a claim for relief under California Code of Civil
14 Procedure, § 704.720.

15 On October 9, 2012, a hearing was conducted before the court on the motion to
16 dismiss. At the suggestion of the court, the parties agreed to make cross-motions for
17 summary judgment based on their respective papers on the motion to dismiss and a
18 stipulation of facts to be filed by the parties, which essentially converted Debtor's motion
19 to dismiss into a cross-motion for summary judgment. Fed. R. Bankr. P. 7012(d),
20 incorporating by reference Fed. R. Civ. P. 12(d). On October 23, 2012, the parties filed
21 their stipulation of facts.

22 On November 13, 2012, the court approved a stipulation between Trustee and the
23 Sheriff's Department, in which the Sheriff's Department agreed to turn over the
24 homestead funds to Trustee on behalf of the bankruptcy estate, pending further order of
25 the court. Following the transfer of the funds by the Sheriff's Department to Trustee
26 pursuant to this stipulation, Trustee filed a dismissal of the Sheriff's Department as a
27 defendant in this adversary proceeding.

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1 **II. DISCUSSION**

2 The court has jurisdiction over this adversary proceeding under 28 U.S.C.
3 §§ 157(a), (b)(1), (2)(e) and § 1334. Venue is proper in this judicial district.

4 For the reasons discussed herein, the court holds that Debtor's homestead
5 exemption has not expired under California Code of Civil Procedure, § 704.720. Thus,
6 Debtor is entitled to summary judgment on grounds that the funds are exempt, and
7 Debtor is further entitled to distribution of the amount of \$50,000 from the estate based
8 on his unexpired homestead exemption.

9 **A. SUMMARY JUDGMENT STANDARD**

10 A party is entitled to summary judgment when "the pleadings, depositions,
11 answers to interrogatories, and admissions on file, together with the affidavits, if any,
12 show that there is no genuine issue as to any material fact and that the moving party is
13 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056. A
14 fact is "material" if it might affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*,
15 477 U.S. 242, 248 (1986). A dispute over such facts is "genuine" if the evidence is such
16 that a reasonable trier of fact could find in favor of the nonmoving party. *Id.* Thus, to the
17 extent that there is a "mixed question of fact and law and the only disputes relate to the
18 legal significance of undisputed facts, the controversy collapses into a question of law
19 suitable to a disposition on summary judgment." *Thrifty Oil Co. v. Bank of America*
20 *National Trust & Savings Assn.*, 322 F.3d 1039, 1046 (9th Cir. 2003).

21 The moving party must show from the record that there is an absence of evidence
22 to support the non-moving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325
23 (1986). In determining whether genuine issues of material fact exist, the evidence must
24 be viewed in the light most favorable to the non-moving party. *Tarin v. County of Los*
25 *Angeles*, 123 F.3d 1259, 1263 (9th Cir. 1997). Once the moving party has demonstrated
26 that no genuine issue of material fact exists, the nonmoving party "must go beyond the
27 pleadings and . . . designate specific facts showing that there is a genuine issue for trial."
28 *Celotex Corp. v. Catrett*, 477 U.S. at 324.

1 **B. REQUIREMENT FOR TURNOVER**

2 Section 542 of the Bankruptcy Code, 11 U.S.C., requires that any entity, other
3 than a custodian, turn over property that the bankruptcy trustee may use, sell, or lease
4 under 11 U.S.C. § 363 or that the debtor may exempt under 11 U.S.C. § 522.
5 Homestead funds are exempt under 11 U.S.C. § 522(b)(3)(A). However, states can opt
6 out of the federal rules for homestead exemptions, an option that the California
7 legislature has previously decided to take. California Code of Civil Procedure, § 703.130;
8 *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012). In California,
9 homestead funds or proceeds are exempt under several provisions of the California Code
10 of Civil Procedure, §§ 704.710-704.850. If a bankruptcy debtor properly claims the
11 homestead exemption, then the covered property is not subject to turnover to the trustee
12 as it is no longer property of the bankruptcy estate. See *Sticka v. Casserino (In re*
13 *Casserino)*, 379 F.3d 1069, 1075 (9th Cir. 2004).

14 **C. STATE HOMESTEAD EXEMPTION STANDARD**

15 California Code of Civil Procedure, § 704.720, sets forth the rule for homestead
16 exemptions for involuntary sales, with the exemption amount determined by California
17 Code of Civil Procedure, § 704.730. Debtor claimed a homestead exemption pursuant to
18 California Code of Civil Procedure, § 704.720, which provides in pertinent part:

19 If a homestead is sold under this division . . . the proceeds of sale . . . are exempt
20 in the amount of the homestead exemption provided in Section 704.730. The
21 proceeds are exempt for a period of six months after the time the proceeds are
22 actually received by the judgment debtor

23 Cal. Code Civ. P., §704.720(b). The six-month timeframe is designed to allow a debtor to
24 reinvest the funds toward another homestead. *Chase v. Bank of America*, 227 Cal. App.
25 2d 259, 264 (1964), *citing*, *Thorsby v. Babcock*, 36 Cal.2d 202, 205-206 (1950)
26 (“[O]bviusly the true purpose of giving the owner that time is to permit him to move his
27 family to another home with the retention of protection from forced sale. . . . Clearly, the
28 Legislature has not required a purchase of other property immediately. Rather it has

1 given the seller the reasonable time of six months within which to complete the
2 transaction.”). Should this time period expire before reinvestment of the homestead
3 funds, the debtor forfeits the right to exempt the homestead funds from bankruptcy. *In re*
4 *Jacobson*, 676 F.3d at 1199. In such case, this would allow the homestead funds to be
5 claimed by the bankruptcy trustee and distributed to the bankruptcy estate.

6 The parties dispute a narrow legal issue – the meaning of the phrase “actually
7 received” in California Code of Civil Procedure, § 704.720. In support of his position that
8 turnover of the funds is required under 11 U.S.C. § 542, Trustee argues that Debtor
9 “actually received” the homestead funds for purposes of California Code of Civil
10 Procedure, § 704.720, because he had the ability to obtain the homestead proceeds from
11 the Sheriff’s Department after the execution sale. *Opposition to Motion to Dismiss*
12 *Complaint (“Opposition”)* at 3:25-4:3. In essence, Trustee contends that the meaning of
13 the phrase “actually received” should include constructive receipt, which would cause the
14 six-month reinvestment period to start running the moment the owner of homestead
15 funds has the opportunity to receive those funds as opposed to the moment that the
16 owner obtains physical possession of the funds. *Opposition* at 3:10-13, 3:25-4:3; Oral
17 Argument, November 13, 2012, at 4:11-4:28 p.m. If Trustee’s statutory interpretation of
18 California Code of Civil Procedure, § 704.720, is correct, the six-month “clock” would
19 have begun once Debtor had constructive receipt of the homestead funds. That starting
20 point under Trustee’s position would have been the date of the forced sale on March 16,
21 2011, which would mean that Debtor’s homestead exemption expired more than one year
22 ago on September 16, 2011. Debtor argues to the contrary that under the plain language
23 of California Code of Civil Procedure, § 704.720, the phrase “actually received” is
24 unambiguous and does not mean constructive receipt as argued by Trustee. *Reply to*
25 *Opposition to Motion to Dismiss (“Reply”)* at 3:18-5:3; Oral Argument, November 13,
26 2012, at 4:11-4:28 p.m. Under Debtor’s view, the six-month reinvestment requirement for
27 the homestead proceeds from an involuntary sale does not apply until he “actually

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1 received” the funds; it is undisputed that the Sheriff’s Department had the funds until the
2 funds were turned over to Trustee pursuant to the stipulated transfer of the funds.

3 In resolving a question of statutory construction, courts must first consider the
4 plain meaning of the particular statute. *United States v. Ron Pair Enterprises, Inc.*, 489
5 U.S. 235, 241 (1989) (“The task of resolving the dispute over the meaning of [a statute]
6 begins where all such inquiries must begin: with the language of the statute itself.”)
7 (citation omitted). “[W]here . . . the statute’s language is plain, the sole function of the
8 courts is to enforce it according to its terms.” *Id.* (citation and internal quotation marks
9 omitted). “[C]ourts must presume that a legislature says in a statute what it means and
10 means in a statute what it says there.” *Connecticut National Bank v. Germain*, 503 U.S.
11 249, 253-254 (1992) (citations and internal quotation marks omitted). “When the words
12 of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is
13 complete.” *Id.* at 254 (citation and internal quotation marks omitted). It is also “[a]
14 fundamental canon of statutory construction . . . that, unless otherwise defined, words will
15 be interpreted as taking their ordinary, contemporary, common meaning.” *Perrin v.*
16 *United States*, 444 U.S. 37, 42 (1979) (citation omitted).

17 Debtor points out that the precise language of the statute provides that
18 “[homestead] proceeds are exempt for a period of six months after the time the proceeds
19 are *actually received* by the judgment debtor” under California Code of Civil Procedure,
20 § 704.720 (emphasis added). To determine whether Debtor’s plain meaning argument is
21 correct, the court must analyze the meaning of the words “actually” and “received” in the
22 statute. The Enforcement of Judgments Law, Part 2, Title 9 of the California Code of
23 Civil Procedure, which includes § 704.720, does not define “actual” or “receipt,” so the
24 court must look to the ordinary meaning of the words. See Cal. Code Civ. P.,
25 §§ 680.010-724.260; *Taniguchi v. Kan Pacific Saipan, Ltd.*, 132 S. Ct. 1997, 2002 (2012).
26 The American Heritage Dictionary defines the word “actual” as something that is “existing
27 and not merely potential or possible” as well as something “based on fact.” *American*
28 *Heritage Dictionary of the English Language* 18 (4th ed. 2006). Black’s Law Dictionary

1 defines “actual” as “[e]xisting in fact, real.” Garner, *Black’s Law Dictionary* 40 (9th ed.
2 2009). “Receipt” is defined as “the act of receiving,” *American Heritage Dictionary of the*
3 *English Language* at 1458, or “[t]he act of receiving something.” Garner, *Black’s Law*
4 *Dictionary* at 1382. The word “receive,” in turn, is defined as “to acquire or to get; to be a
5 recipient.” *American Heritage Dictionary of the English Language* at 1458. In California
6 Code of Civil Procedure, § 704.720, the word “actually” modifies the word “receipt” as
7 part of the phrase that pertains to homestead exemption proceeds. Therefore, the
8 phrase means that the statute applies to proceeds that have been acquired and are
9 existing, which contradicts Trustee’s interpretation of the statute. The meaning of
10 constructive receipt directly conflicts with the definition of “actually,” which is “not merely
11 potential or possible.” *American Heritage Dictionary of the English Language* at 18
12 (definition of “actual”). “Potential” and “possible” are terms that succinctly describe what
13 constructive receipt entails. *Id.* The word “constructive” means “[l]egally imputed;
14 existing by virtue of legal fiction through not existing in fact.” Garner, *Black’s Law*
15 *Dictionary* at 356. Given the ordinary meaning of the words in the statute, “actually
16 received,” the court should interpret the statute that actual receipt of the sales proceeds
17 rather than constructive receipt is required to start the six-month time period for
18 reinvestment under California Code of Civil Procedure, § 704.720. Construing “actually
19 receiving” to include constructive receipt is not the ordinary meaning of these words.
20 Moreover, such a broad interpretation of the words in the statute, “actually receiving,” to
21 include constructive receipt is inconsistent with the legislative policy for liberally
22 construing the statutory language on homestead exemptions in favor of created
23 exemptions. *Chase v. Bank of America*, 227 Cal. App. 2d at 264, *citing*, *Thorsby v.*
24 *Babcock*, 36 Cal. 2d at 205-206. Accordingly, the court concludes that based on the
25 plain meaning of the language of California Code of Civil Procedure, § 704.720, the
26 phrase “actually received” does not include constructive receipt.

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1 **D. RELEVANT CASE LAW DOES NOT SUPPORT TRUSTEE’S POSITION**

2 Trustee also relies on several cases to support his argument that the six-month
3 window for Debtor to reinvest the homestead funds has expired based on a constructive
4 receipt of the funds. Trustee contends that the interpretation of homestead exemptions in
5 the case law provides an opening that more than just physical possession marks the start
6 of the six-month clock for homestead exemptions to expire and that constructive receipt
7 can suffice. Trustee relies upon the case of *In re Cumberbatch*, 302 B.R. 675 (Bankr.
8 C.D. Cal. 2003) to support his position, arguing that the six-month reinvestment period
9 begins at the date of sale, which is when funds become available. In *Cumberbatch*, the
10 court held that a bankruptcy debtor may properly claim the automatic homestead
11 exemption in proceeds of the sale of her home ordered by a family law court as
12 involuntary within the meaning of California Code of Civil Procedure, § 704.720. *Id.* at
13 681.

14 Courts have generally upheld the six-month reinvestment requirement of California
15 Code of Civil Procedure, §704.720, in order to preserve the exempt status of sales
16 proceeds from an involuntary sale of a homestead dwelling, but these courts have not
17 definitively addressed when the six-month time period from receipt begins. *See, e.g., In*
18 *re Jacobson*, 676 at 1198 (holding that when a couple’s dwelling was sold in an execution
19 sale and they received the homestead funds, the exempt status of the funds was lost if
20 they were not reinvested “within six months,” but the court did not specifically address the
21 issue of when the period started); *see also, In re Cumberbatch*, 302 B.R. at 681 (holding
22 that a debtor was entitled to a homestead exemption because the sale of her home—
23 ordered by the family law court—was involuntary for purposes of claiming the homestead
24 exemption under California Code of Civil Procedure, § 704.720). The *Cumberbatch* court
25 held that “the proceeds of sale of the homestead are exempt for up to six months after
26 receipt,” but did not definitively speak to whether “receipt” referred to physical possession
27 or could simply refer to the ability to receive possession. 302 B.R. at 681.

1 Trustee's argument based on *Cumberbatch* misses the mark because the holding
2 in that case as the issue in *Cumberbatch* was whether a debtor's claim of homestead
3 exemption in bankruptcy was proper where the property was sold prepetition pursuant to
4 a marital dissolution judgment. That case did not specifically address the issue of when
5 was the starting point of the six-month reinvestment period under California Code of Civil
6 Procedure, § 704.720. See *id.* at 678-679. Rather, the court determined whether the
7 homestead exemption was proper based on a finding that the sale of a dwelling, which
8 was ordered by a family law court in a marital dissolution, was involuntary rather than
9 voluntary. *Id.* at 681. The court stated that "the proceeds of sale of the homestead are
10 exempt for up to six months *after receipt*," but did not precisely address whether its
11 interpretation of "receipt" would permit constructive receipt or possession or, even what
12 would trigger a "receipt." *Id.* at 678 (emphasis added).

13 In this case, Trustee contends that the "actually received" phrase in California
14 Code of Civil Procedure, § 704.720, relates to the date the Debtor's property sold.
15 Trustee apparently draws an inference from the court's opinion in *Cumberbatch*, stating,
16 "Debtor filed her [bankruptcy] petition within a month after escrow closed" in the next
17 paragraph as the implied reason the debtor can receive an exemption. *Id.* Trustee would
18 tie this inference from *Cumberbatch* to Debtor's case by pointing to a possible connection
19 between the funds from the homestead sale placed into an escrow account in
20 *Cumberbatch* as analogous to funds held by the Sheriff's Department. Trustee argues
21 that "[t]he result would have been different if the bankruptcy filing had not occurred within
22 the [six]-month period after the funds were deposited in the escrow account," but
23 provides no authority for such a conclusion. *Opposition* at 3:20-21. Trustee's reliance on
24 *Cumberbatch* is misplaced because that court did not specifically address the issue of
25 whether the date of sale, or another event, was determinant in deciding the starting point
26 of "receipt."

27 California Code of Civil Procedure, § 704.720, specifically states that the
28 homestead exemption's six-month reinvestment "clock" starts when homestead proceeds

1 are “actually received.” On the other hand, California Code of Civil Procedure,
2 § 704.960, starts the six-month “clock” at the date of the sale. In this regard, *Chase v.*
3 *Bank of America* is instructive. *Chase* involved a judgment debtor whose homestead
4 dwelling was sold in a foreclosure sale, but after the sale, the foreclosure trustee held
5 onto the sales proceeds, including the amount claimed by the debtor as exempt under
6 her homestead. 227 Cal. App. 2d at 261. Similar to the Trustee’s argument in the case
7 at bar, the trial court in *Chase* concluded that the debtor lost the homestead exemption in
8 the sales proceeds because “[s]he took no effective steps to gain possession of the funds
9 within the six months period or within any reasonable extension thereof.” *Id.* at 263. The
10 appellate court reversed the trial court and held that the debtor was entitled to homestead
11 funds, even though six months had passed since the date of an involuntary sale of her
12 dwelling because under the statute, “in the case of a forced or involuntary sale, the owner
13 has no control over the excess proceeds, if any, and must wait to obtain them from the
14 sheriff, commissioner, trustee, etc. It would be manifestly unreasonable to commence
15 the running of the [six-month] exemption period before the homestead claimant obtains
16 payment.” 227 Cal. App. 2d at 264. As noted in *Chase*, in contrast, “[i]n the case of a
17 voluntary sale, the owner has control of the sale and can usually obtain the proceeds
18 thereof without delay.” *Id.* at 263. Thus, the appellate court in *Chase* recognized the use
19 of the words “actually received” in former California Civil Code, § 1257, the predecessor
20 statute to California Code of Civil Procedure, § 704.720, as having significance because
21 of the homeowner’s lack of control over a forced sale and the inherent delay in payment
22 of the homestead proceeds. 27 Cal. App. 2d at 263-264, *citing inter alia*, *Thorsby v.*
23 *Babcock*, 36 Cal. 2d at 205-206. In the case at bar, Debtor had no control over the
24 forced sale of his dwelling or over the homestead proceeds as indicated by the Sheriff’s
25 Department’s refusal to turn over the funds to him without an order of this court.

26 The case of *Thorsby v. Babcock* cited in *Chase* further supports Debtor’s position,
27 though it involves a voluntary, rather than an involuntary, sale. In *Thorsby*, a homeowner
28 who sold his dwelling to pay a judgment to creditors sought to obtain homestead funds

1 from the escrow account holder based on his homestead exemption. 36 Cal. 2d at 203.
2 Because the creditors had executed judgment levies on the escrowed funds, including
3 the homestead funds, the escrow holder refused to pay the proceeds allocated to the
4 homestead exemption to the homeowner. *Id.* The California Supreme Court held that
5 the homeowner was still entitled to the homestead funds as exempt, even though six
6 months had passed from the sale of the dwelling. *Id.* at 206 (explaining that “the
7 legislative purpose [of the homestead exemption] is thwarted if the proceeds from the
8 sale of the homestead cannot be obtained by the owner, through no fault of his own,
9 during the six months’ period. . . . During that time it [is] impossible for [the homeowner]
10 to reinvest in a new home of his family and obtain exemption of it.”). While interpreting
11 California Civil Code, § 1265, a precursor statute to California Civil Procedure, §704.960,
12 which is the current statute governing homestead exemptions for proceeds from
13 voluntary, rather than involuntary, sales, *Thorsby* makes clear that in light of liberal policy
14 towards the homestead exemption, the six-month time reinvestment period does not start
15 if the homestead funds are not available to the homeowner to reinvest. It can thus be
16 inferred from *Thorsby* that the reinvestment time period would only start once the
17 homestead funds are available to the homeowner. Even though *Thorsby* involved a
18 voluntary sale of a dwelling, the same rationale regarding the availability of the
19 homestead funds to the homeowner applies here to Debtor who did not have the funds
20 available to him to reinvest in a new dwelling because the funds were being held by an
21 uncooperative third party, the Sheriff’s Department.

22 Trustee relies on the *Jacobson* case to support his position, but that case is not
23 helpful to Trustee. *Jacobson* involved the situation of a married couple attempting to
24 claim a homestead exemption following an involuntary execution sale. 676 F.3d at 1197-
25 1198. The Ninth Circuit held that if a bankruptcy debtor did not reinvest homestead
26 proceeds in a new dwelling within six months of receipt, the proceeds would lose their
27 exempt status. *Id.* at 1198-1199. However, the court in *Jacobson* said nothing to support
28 Trustee’s position argued in this case that constructive receipt is sufficient to begin the

1 six-month reinvestment period under California Code of Civil Procedure, § 704.720.
2 Moreover, the facts in *Jacobson* are distinguishable because that case involved the
3 situation in which the debtor actually received the homestead funds from the execution
4 sale and failed to reinvest the proceeds, which is not the situation here because Debtor
5 never actually received the funds. 676 F.3d at 1197-1198.

6 The court concludes that there is no legal authority to support Trustee’s
7 interpretation contrary to the plain meaning of the statutory language that the phrase
8 “actually received” in California Code of Civil Procedure, § 704.720, includes constructive
9 receipt. Accordingly, the court holds that the six-month period for reinvestment of
10 homestead funds before the homestead exemption for such funds expires in the case of
11 an involuntary sale does not begin to run until the bankruptcy debtor has actual –
12 meaning physical – possession of the homestead funds. The court further holds that
13 Debtor is therefore entitled to the homestead funds totaling \$50,000 based on his
14 unexpired homestead exemption.

15 For the foregoing reasons, the court grants Debtor’s motion for summary judgment
16 and denies Trustee’s cross-motion for summary judgment. Nothing in this memorandum
17 decision, however, relieves Debtor from his obligation to comply with California Code of
18 Civil Procedure, § 704.720(b) and reinvest the exempt funds within six months of actual
19 receipt. See *In re Jacobson*, 676 F.3d at 1197-1200. Therefore, the denial of Trustee’s
20 motion for summary judgment is without prejudice to the right of Trustee to file a renewed
21 turnover action if Debtor fails to comply with the California homestead exemption
22 requirements to reinvest the homestead proceeds in a new dwelling under California

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1 Code of Civil Procedure, § 704.720. The court further orders Debtor to lodge and serve a
2 proposed judgment consistent with this memorandum decision.

3 IT IS SO ORDERED.

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25 DATED: December 6, 2012



United States Bankruptcy Judge

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NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **ORDER RE CROSS MOTIONS FOR SUMMARY JUDGMENT** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **December 5, 2012**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

Helen R Frazer hfrazer@aalrr.com
David A Gill (TR) mlr@dgd.com, dgill@ecf.epiqsystems.com;DanningGill@Gmail.com
Barry S Glaser bglaser@swjlaw.com
United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov
Barry R Wegman barrywegman@tilemlaw.com,
malissamurguia@tilemlaw.com;dianachau@tilemlaw.com;joanfidelson@tilemlaw.com

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Debtor:

John M Woodburn
272 South Los Robles Ave
Pasadena, CA 91101-2872

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below: