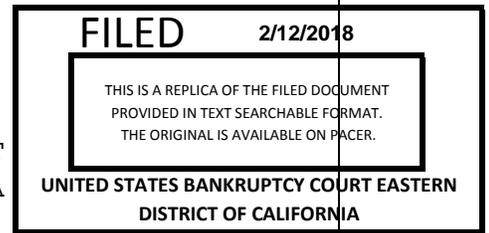


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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

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In re	)	Case No. 16-12687-B-7
	)	
LORAIN GOODWIN MILLER,	)	DC No. TGM-2
	)	
Debtor.	)	
	)	

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**MEMORANDUM OF DECISION**

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INTRODUCTION

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This decision holds that the debtor did not meet her burden of proof to establish a claim of exemption in funds held by an escrow holder even though the original source of those funds may have been a benefit from the Public Employee Retirement System. This decision also holds that even if the Debtor had met her burden of proof and all excluded evidence was admitted, the proceeds held by the escrow holder were not exempt even if those proceeds were properly traced from the retirement benefit.

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FACTS<sup>1</sup>

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Dr. Loraine Goodwin-Miller worked as a physician for the California Department of Corrections and Rehabilitation (CDCR) for fourteen years. She also operated the Weight Management Center in the city of Madera, California and is on the "Central

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<sup>1</sup> The following are the court's findings of fact and conclusions of law under Fed. R. Civ. P. 52 made applicable to contested matters under Fed. R. Bankr. P. 7052 and 9014(c). If any of the following facts are deemed conclusions of law, the court adopts those facts as conclusions of law. If any of the following conclusions of law are deemed findings of fact, the court adopts those conclusions as findings of fact.

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1 Air Board" (Document No. 1). She is the sole proprietor of  
2 "Goodwin Greenhouse" which is a non-profit domestic violence  
3 shelter in Madera (Document No. 1).

4 In April 2014, Dr. Goodwin-Miller signed a contract to buy  
5 a building located at 801 W. Yosemite in Madera, California from  
6 James E. Walters for \$205,000.00. An escrow was opened at Placer  
7 Title Company. Dr. Goodwin-Miller was to put \$20,000.00 down.  
8 The remaining \$185,000.00 was to be financed by Mr. Walters. The  
9 origin of the \$20,000.00 and its character when Dr. Goodwin-  
10 Miller filed this bankruptcy case is this proceeding's pivotal  
11 issue.

12 Dr. Goodwin-Miller was eligible for Public Employment  
13 Retirement System benefits since she had been employed by CDCR.<sup>2</sup>  
14 She withdrew \$25,000.00 (less Federal withholding and a check  
15 processing fee) from her account at Savings Plus.<sup>3</sup> The Debtor  
16 deposited the net withdrawal (\$19,997.50) into a dormant Weight  
17 Management Center business account at Wells Fargo. One day  
18 later, the Debtor tendered a \$5,000.00 cashier's check to real  
19 estate agent, Nellie Begley, of Begley Properties, which was  
20 deposited into an escrow account at Placer Title Company. Less  
21 than two months later, on June 2, 2014, the Debtor tendered a  
22 cashier's check for \$14,960.00 from the Wells Fargo account and  
23 other cash to Placer Title to fund the down payment for the

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24 <sup>2</sup> Future references to Dr. Goodwin-Miller will be to "Debtor."  
25 This is for ease of reference only and no disrespect is intended by  
26 the court to Dr. Goodwin-Miller or her professional status.

27 <sup>3</sup> The Savings Plus account was actually a "401K" account.  
28 While not clear from the testimony at the hearing, the court  
presumes that the Debtor's PERS retirement benefits were at least  
in part "rolled over" into a 401K.

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1 Walters/Goodwin-Miller escrow. The purchase never finalized.  
2 Litigation ensued. The Debtor did not prevail on her specific  
3 performance claim in Madera County Superior Court and Mr.  
4 Walters' was awarded \$50,000.00 against the Debtor.<sup>4</sup> The court  
5 has no evidence that the escrow ever closed.

6 The Debtor filed this bankruptcy case, *pro se*, on July 26,  
7 2016. James Salven was appointed Chapter 7 Trustee ("Trustee").  
8 The schedules included a list of exemptions which were amended  
9 on June 6, 2016. Among the exemptions claimed by the Debtor was  
10 "100%" of the escrow funds. The parties have agreed that the  
11 amount held by Placer Title for the Debtor's and the Trustee's  
12 benefit is \$20,119.11 ("escrow funds"). The Debtor claims the  
13 escrow funds are traceable private and public retirement  
14 benefits; disability benefits; worker's compensation benefits;  
15 are in a deposit account; is a personal injury award and are  
16 social security benefits.

17 The Trustee hired counsel. The Trustee filed objections to  
18 the Debtor's exemptions on March 29, 2017 (Document No. 55).  
19 Three exemption claims were challenged: a 1999 Lexus, the  
20 Debtor's homestead, and the escrow funds. The objections to the  
21 1999 Lexus, and the Debtor's homestead exemptions, were  
22 eventually dropped by the Trustee after discovery proceedings.  
23 This matter only proceeded on the Trustee's objection to the  
24 Debtor's claimed exemption in the escrow funds.

25 The Debtor opposed the Trustee's objection (Document No.  
26 61) and attached numerous exhibits to her response. The parties  
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28 <sup>4</sup> There is no evidence as to why or how this award was made.  
It is not relevant to these proceedings.

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1 engaged in discovery.<sup>5</sup> The court scheduled an evidentiary  
2 hearing, which was held February 2, 2018.

3 At the hearing, the Debtor offered several documents as  
4 exhibits. The exhibits were marked. The exhibits showed the net  
5 withdrawal of \$20,000.00 from the Savings Plus account; deposit  
6 into the Wells Fargo account; withdrawals from the Wells Fargo  
7 account; payment of \$5,000.00 to Nellie Begley and the remaining  
8 down payment balance deposited into the escrow two months later  
9 by the Debtor. The Trustee objected to the admission of those  
10 exhibits for lack of foundation and hearsay. The court sustained  
11 those objections. The Debtor testified about the various  
12 transactions. The Trustee objected to some of the testimony. The  
13 court made various rulings on those objections.

**CONTENTIONS OF THE PARTIES**

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16 The Debtor contends that the escrow funds are directly  
17 traceable to the withdrawal from the Savings Plus 401K account  
18 and that the funds in that account were derived from her PERS  
19 retirement benefits. Consequently, the Debtor claims, under Cal.  
20 Civ. Proc. §§ 704.110 and 703.080 the \$20,119.11 is fully  
21 exempt.

22 The Trustee counters, contending the Debtor has not met her  
23 burden of proof to establish tracing into the escrow account and  
24 that the escrow account is not the same as other accounts to  
25 which exempt property proceeds can be traced under California  
26 law.

27 \_\_\_\_\_  
28 <sup>5</sup> A review of the docket will reflect the Trustee did file  
motions to compel the Debtor's compliance with certain discovery  
demands. The court has entered separate orders on those matters.

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JURISDICTION

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2 The United States District Court for the Eastern District  
3 of California has jurisdiction of this bankruptcy proceeding  
4 under 28 U.S.C. § 1334(b) in that this is a civil proceeding  
5 arising under Title 11 of the United States Code. The District  
6 Court has referred this matter to this court under 28 U.S.C. §  
7 157(a). This is a "core" proceeding under 28 U.S.C. §  
8 157(b)(2)(B).

ANALYSIS

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11 1. The Debtor did not meet her burden of proof that the escrow  
12 funds were exempt when the petition was filed.

13 When a Debtor files a Chapter 7 petition, all of the  
14 Debtor's legal or equitable interests in property become  
15 property of the estate, subject to the Debtor's right to reclaim  
16 certain property as exempt. *Schwab v. Reilly*, 560 U.S. 770, 774  
17 (2010). 11 U.S.C § 522 provides a default list of exemptions,  
18 but allows states to opt out of the Federal scheme and define  
19 their own exemptions. 11 U.S.C. § 522(b)(2), (b)(3)(A), (d).  
20 California has opted out of the Federal exemptions scheme and  
21 permits its Debtors only the exemptions allowable under state  
22 law. Cal. Civ. Proc. § 703.130. The bankruptcy court decides the  
23 merits of state exemptions, but the validity of the exemption is  
24 controlled by California law. *Diaz v. Kosmala (In re Diaz)*, 547  
25 B.R. 329, 334 (9th Cir. B.A.P. 2016) (citing *LaFortune v. Naval*  
26 *Weapons Ctr. Fed. Credit Union (In re LaFortune)*, 652 F.2d 842,  
27 846 (9th Cir. 1981)). California exemptions are to be broadly

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1 and liberally construed in favor of the Debtor. *Elliott v. Weil*  
2 (*In re Elliott*), 523 B.R. 188, 192 (9th Cir. B.A.P. 2014).

3 A Debtor's exemption rights are determined as of the  
4 petition date. *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d  
5 1193, 1199 (9th Cir. 2012) ("under the so-called 'snapshot'  
6 rule, bankruptcy exemptions are fixed at the time of the  
7 bankruptcy petition."); *Gose v. McGranahan (In re Gose)*, 308  
8 B.R. 41, 45 note 7 (9th Cir. B.A.P. 2004). So, the Debtor's  
9 exemption rights were fixed on the day she filed the bankruptcy  
10 petition, July 26, 2016 (Document No. 1). On that date it is  
11 beyond dispute that the escrow funds at issue were being held by  
12 Placer Title Company for the benefit of the Debtor, the Debtor's  
13 estate, and Mr. Walters.<sup>6, 7</sup>

14 Generally, a Debtor's claimed exemption is presumptively  
15 valid, and the objecting party has the burden of proving that  
16 the exemption is improper. *In re Diaz*, 547 B.R. 336 (citing  
17 *Carter v. Anderson (In re Carter)*, 182 F.3d 1027, 1029 note 3  
18 (9th Cir. 1999); Fed. R. Bankr. P. 4003(c)). However, where a  
19 state law exemption statute specifically allocates the burden of  
20 proof to the Debtor, as California has done here, Rule 4003(c)  
21 does not change that allocation. *Diaz*, 547 B.R. 337; Cal. Civ.  
22 Proc. § 703.580(b). Thus, the Debtor here has the burden to  
23 prove that she is entitled to the exemptions she claims.

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<sup>6</sup> The Trustee and the Debtor have advised the court that Mr.  
26 Walters no longer makes any claim to the escrow funds.

27 <sup>7</sup> The Trustee filed an adversary proceeding against Placer  
28 Title and others for turnover. See Fed. R. Bankr. P. 7001. That  
adversary proceeding (17-01039) is abated pending the outcome of  
this contested matter.

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1           The evidence submitted before the court is scant. The  
2 Debtor was a believable, intelligent, and articulate witness.  
3 She appeared before the court to be calm, well-organized, and  
4 credible<sup>8</sup>. No proper foundation was laid for the admission of the  
5 documents evidencing tracing from the 401K account directly into  
6 the escrow account and temporarily passing through Weight  
7 Management's Wells Fargo Bank account. No foundation was  
8 presented for the tendering of the \$5,000 check to Begley  
9 Properties or the funding of the escrow included in the escrow  
10 closing statement. The Trustee made foundation objections to the  
11 admission of all of those documents. Even if a proper foundation  
12 was presented, establishing that the documents were what the  
13 Debtor purported them to be, Fed. R. Evid. 901(a), the documents  
14 offered by the Debtor are almost entirely hearsay and excluded  
15 by Fed. R. Evid. 802. No testimony of the custodian of the  
16 business records at issue was presented by the Debtor, nor a  
17 certification in compliance with Fed. R. Evid. 902(11) or (12),  
18 803(6). Thus, there is no applicable exception to the rule  
19 against hearsay permitting the admission of the documents under  
20 Fed. R. Evid. 803.

21  
22           <sup>8</sup> The court is constrained to point out though that a few days  
23 after the matter was submitted, the Debtor tendered a declaration  
24 to the court stating facts she claims she remembered since the  
25 hearing. Six days after the matter was submitted the Debtor  
26 submitted an additional declaration (again, her own). The  
27 declarations and accompanying documents were apparently not served  
28 on the trustee or his counsel, were not filed as part of the  
record, and are improper *ex parte* communications. They have not  
been considered. Even *pro se* litigants must comply with court  
rules. *Clinton v. Deutsche Bank Nat'l Trust Co. (In re Clinton)*,  
449 B.R. 79, 83 (9th Cir. B.A.P. 2011).

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1           When asked by the court, the Debtor did state that both  
2 Wells Fargo and Nationwide Retirement Solutions (apparently a  
3 successor or other corporate "relation" to Savings Plus) were  
4 served with a subpoena to testify. The court was not provided  
5 with copies of the subpoenas. However, the Debtor did provide  
6 copies of proofs of service that show both parties were tendered  
7 a \$50 witness fee and a subpoena to appear and testify at a  
8 hearing or trial in a bankruptcy case and to produce documents.  
9 But, both proofs of service show service on an agent for service  
10 of process not delivery to a named person since the subpoenas  
11 purportedly required attendance. See Fed. R. Civ. Proc. 45(b)(1)  
12 (applicable to bankruptcy proceedings by Fed. R. Bankr. P.  
13 9016). In sum, Debtor did not meet her burden of proof to  
14 establish tracing from the 401K account to the escrow account.  
15 So, the Debtor's claim of exemption under Cal. Civ. Proc. §  
16 704.110 fails for lack of proof.

17           The same infirmity applies to the Debtor's proof under the  
18 other exemptions claimed for the escrow funds. Cal. Civ. Proc. §  
19 704.115(b) states that amounts "held, controlled, or in process  
20 of distribution, by a private retirement plan for the payment of  
21 benefits and after payments, those funds are exempt." But, the  
22 Debtor failed to prove that the escrow funds were in fact  
23 retirement benefits even if they could be deemed from a "private  
24 retirement account." Cal. Civ. Proc. § 704.130(a) states that  
25 "[b]efore payment, benefits from a disability or health  
26 insurance policy or program are exempt without making a claim.  
27 After payment, the benefits are exempt." There was no evidence  
28 before the court that any funds at issue were payments from a

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1 disability or health insurance policy.<sup>9</sup> Cal. Civ. Proc. §  
2 704.140(a) states that "except as provided in Article 5 of  
3 Chapter 6, a cause of action for personal injury is exempt  
4 without making a claim." Subsection b states that "except as  
5 provided in subdivisions (c) and (d), an award of damages or a  
6 settlement arising out of personal injury is exempt to the  
7 extent necessary for the support of the judgment debtor and the  
8 spouse and dependents of the judgment debtor." There is no  
9 evidence that any of the benefits at issue were from a personal  
10 injury claim. The Debtor's schedules do not reveal a personal  
11 injury claim.

12 At the conclusion of the evidentiary hearing, the Debtor  
13 did request additional time to present the subpoenaed witness  
14 testimony. But, since the court did not have the actual subpoena  
15 to review and since the subpoenas were not likely served  
16 correctly, the court declined the Debtor's request. The  
17 evidentiary hearing had been on calendar for quite some time -  
18 since the fall of 2017. The Debtor had sufficient time to engage  
19 in and complete discovery which may have abrogated the need to  
20 have custodial witnesses testify concerning the documents  
21 offered.<sup>10</sup>

22 \_\_\_\_\_  
23 <sup>9</sup> The Debtor does receive Social Security Disability Income.  
24 However, the Debtor has always maintained that the source of the  
25 funds in the escrow account were originally from her PERS benefits.

26 <sup>10</sup> In addition to the basis for the exemption claims discussed,  
27 the Debtor's amended claim of exemption also claimed the escrow  
28 funds were exempt as worker's compensation or social security  
benefits. The same proof problems apply to those claims as well. No  
worker's compensation claim was listed in the Debtor's schedules.  
The Debtor has also maintained that the source of the funds at  
issue was not social security benefits.

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1 2. Even if the offered documents and testimony had been  
2 admitted, it would not change the court's ruling.

3 Judges can reasonably differ about evidentiary rulings.  
4 Another judge could find that the evidence offered here by the  
5 Debtor was sufficiently authenticated. After all, Fed. R. Evid.  
6 903 provides that a subscribing witnesses' testimony is not  
7 always necessary to authenticate documents (see also Fed. R.  
8 Evid. 901(a)); *Melridge v. Heublein*, 125 B.R. 825, 829 (D. Or.  
9 1991); *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 505 F.  
10 Supp. 1190 (E.D. Pa. 1980). It is the Debtor's burden here as  
11 proponent of the evidence to establish that the evidence is  
12 authentic. The Debtor, however, could rely on circumstantial  
13 evidence and need not present the testimony of the original  
14 custodian of records. *Melridge*, 125 B.R. at 828. The sufficiency  
15 of authentication is always discretionary with the court.  
16 *Security Farms v. International Bhd. of Teamsters*, 124 F.3d 999  
17 (9th Cir. 1997). Another judge may, for example, note that the  
18 distinctive characteristics of the documents presented and all  
19 the circumstances surrounding their presentation would be  
20 sufficient authentication. See Fed. R. Evid. 901(b)(4). The  
21 documents offered by the Debtor consisted largely of copies of  
22 bank or account statements that displayed familiar trade dress  
23 and appeared to be prepared in the ordinary course of the  
24 business of the statement preparers. Also, the signatures on the  
25 cashier's checks and money orders may in fact be self-  
26 authenticating. See Fed. R. Evid. 902(9); Cal. Comm. Code §§  
27 3302, 3308, 8107(b).

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1 Another judge may find the hearsay problem solvable by  
2 applying the "residual hearsay" exception under Fed. R. Evid.  
3 807. The elements of the exception could be found to be present.  
4 The documents appear to be trustworthy based on circumstantial  
5 evidence. The copies presented to the court appear to be  
6 originally prepared in the ordinary course of business and the  
7 Trustee did not dispute the journey of the funds urged by the  
8 Debtor or the authenticity of the copies offered. The documents  
9 do relate to a material fact in dispute - the tracing of exempt  
10 retirement proceeds. The documents are also more probative than  
11 other evidence the Debtor could obtain through reasonable  
12 efforts. Here, the Debtor did serve a subpoena (albeit  
13 improperly) on two potential witnesses who did not appear and  
14 whose testimony would not likely be contradicted by the Trustee  
15 who had planned to call no witnesses except perhaps an  
16 unidentified rebuttal witness. Finally, the admission of the  
17 documents could be found to be in the interest of justice and  
18 consistent with the manner in which the rules of evidence should  
19 be applied. See Fed. R. Evid. 102.

20 In fact, the Trustee who objected to the admission of the  
21 evidence never raised a question as to the reliability of any of  
22 the offered documents. To be sure, the Trustee did not waive his  
23 objections to their admission but they were before the Trustee  
24 very early in the proceedings. They were part of what was  
25 originally filed by the Debtor in opposition to the Trustee's  
26 objection. (Document No. 61). The opposition was filed on April  
27 11, 2017, which is nearly ten months before the evidentiary  
28 hearing. The Trustee certainly had an opportunity to explore and

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1 examine the reliability of the documents when he deposed the  
2 Debtor.

3       The court asked the Debtor at the evidentiary hearing what  
4 she hoped to prove through the witnesses who did not appear. The  
5 court allowed the Debtor to make her offer of proof and asked if  
6 the Trustee would stipulate to the admission of the evidence and  
7 to the facts the Debtor hoped to prove. He would not. In any  
8 event, the admission of all the documents, and the testimony of  
9 the absent witnesses, would not change the result since the  
10 retirement funds lost their exempt character when they were used  
11 to fund the purchase of the building.

12       First, the escrow account is not a "deposit account"  
13 subject to the tracing of an exempt fund under California law.  
14 Cal. Civ. Proc. § 703.080(a) provides, "Subject to any  
15 limitation provided in the particular exemption, a fund that is  
16 exempt remains exempt to the extent that it can be traced into  
17 deposit accounts or in the form of cash or its equivalent."

18       The escrow is not a "deposit account." Cal. Civ. Proc. §  
19 704.080 defines "deposit account" to mean a "deposit account in  
20 which payments of public benefits or social security benefits  
21 are directly deposited by the government or its agent." The  
22 Placer Title escrow for the purchase of the building is not an  
23 account where public benefits or social security benefits are  
24 directly deposited. Also, Cal. Comm. Code § 9102(a)(29) defines  
25 a "deposit account" as "demand, time, savings, passbook, or  
26 similar account maintained with a bank. The term does not  
27 include investment property or accounts evidenced by an  
28 instrument." The Placer Title escrow is not a demand, time,

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1 savings, passbook, or similar account. In particular, under  
2 California law, escrow holders are not demand depositories.

3       Second, an escrow holder cannot unilaterally dispose of  
4 funds that are subject to escrow. An escrow holder is the agent  
5 of all the parties to the escrow at all times prior to  
6 performance of the conditions of the escrow. *Spaziani v. Millar*,  
7 215 Cal. App. 2d 667, 682 (1963) (citing *Shreeves v. Pearson*,  
8 194 Cal. 699, 707 (1924)). An escrow holder requires consent of  
9 both parties before removal of property, documents, or  
10 instruments held by an escrow holder. *Karras v. Title Ins. &*  
11 *Guar. Co.*, 118 Cal. App. 2d 659, 665 (1953). If an escrow holder  
12 disposes of property [in escrow] in violation of instructions,  
13 or otherwise breaches that duty, he will be responsible for any  
14 loss occasioned thereby. *Spaziani*, 215 Cal. App. 2d at 682  
15 (citing *Amen v. Merced Cty. Title Co.* 58 Cal. 2d 528 (1962)).  
16 There is no evidence before the court here that Placer Title  
17 acted as anything other than an escrow holder in the property  
18 purchase transaction involving the Debtor and Mr. Walters. The  
19 application of California law thus establishes that the funds  
20 could not be unilaterally paid to the Debtor, or the Trustee,  
21 for that matter, without conditions that have not been proven to  
22 the court.

23       In fact, California law limits an escrow holder's duties  
24 concerning escrow funds. An escrow holder has no duty to deposit  
25 funds in an interest bearing account without an instruction to  
26 do so. *Hannon v. W. Title Ins. Co.*, 211 Cal. App. 3d 1122, 1128  
27 (1989). An escrowee is not a trustee of funds. Cal. Prob. Code §  
28 82(b)(14) (West, 2018). "An escrow holder has no general duty to

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1 police the affairs of its depositors . . . an escrow holder's  
2 agency is limited to faithful compliance with instructions."  
3 *Hannon*, 211 Cal. App. 3d at 1128 (citing *Schaefer v.*  
4 *Manufacturers Bank*, 104 Cal. App. 3d 70, 77-78 (1980)); *Summit*  
5 *Financial Holdings, Limited v. Cont'l Lawyers Title Co.*, 27 Cal.  
6 4th 705, 711 (2002). Absent contrary escrow instructions, title  
7 to deposits vest in a seller when the seller accepts the  
8 underlying contract. *Rutherford Holdings LLC v. Plaza Del Rey*,  
9 223 Cal. App. 4th 221, 233-34 (2014) abrogated on other grounds  
10 by *Lee v. Hanley*, 61 Cal. 4th 1225, 1240 (2015). Neither party  
11 presented any evidence of the terms of the escrow instructions  
12 for the Walters/Goodwin-Miller sale.

13       The retirement funds lost their exempt character when the  
14 Debtor paid \$5,000.00 out of the Wells Fargo account to Begley  
15 Properties, which was deposited with Placer Title to open the  
16 escrow. Also, when the Debtor made the larger payment from the  
17 Wells Fargo account to Placer Title to fund her "down payment"  
18 those funds lost their character as retirement funds. Neither  
19 Ms. Begley nor Placer Title are "deposit accounts" to which  
20 exempt funds can be traced. Therefore, even if the Debtor's  
21 proffered documents and testimony were entertained by the court,  
22 the result remains the same.

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CONCLUSION

For the foregoing reasons, the Trustee's Objection to the Debtor's Claim of Exemption in the \$20,119.11, being held by Placer Title, is SUSTAINED. A separate order shall issue.

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**Instructions to Clerk of Court  
Service List - Not Part of Order/Judgment**

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked  X , via the U.S. mail.

Lorraine Goodwin Miller  
1625 Howard Rd #277  
Madera CA 93637

James Edward Salven  
PO Box 25970  
Fresno CA 93729

Trudi G. Manfredo  
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United States Courthouse  
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Fresno CA 93721