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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No.	EC-16-1196-TaBJu
6	SCOTT CHARLES POMEROY,)	Bk. No.	15-26465
7	Debtor.)		
8	_____)		
9	JOHN R. ROBERTS, Chapter 7)		
10	Trustee,)		
11	Appellant,)		
12	v.)	MEMORANDUM*	
13	SCOTT CHARLES POMEROY,)		
14	Appellee.)		
	_____)		

Argued and Submitted on March 23, 2017
at Sacramento, California

Filed - April 24, 2017

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable Robert S. Bardwil, Bankruptcy Judge, Presiding

Appearances: _____
 Gregory Joseph Hughes of Hughes Law Corporation
 argued for appellant; Lucas B. Garcia of The Law
 Office of Luke Garcia argued for appellee.

Before: TAYLOR, BRAND, and JURY, Bankruptcy Judges.

* This disposition is not appropriate for publication.
 Although it may be cited for whatever persuasive value it may
 have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8024-1(c)(2).

1 **INTRODUCTION**

2 Chapter 7¹ debtor Scott Pomeroy's tax-exempt retirement
3 plan holds approximately \$400,000 in assets, including a vacant
4 lot. After filing a chapter 7 petition, he claimed the entire
5 value in the plan as exempt. The chapter 7 trustee objected.
6 The bankruptcy court overruled the exemption objection and
7 concluded that Debtor could exempt the full amount of the Plan
8 under both federal and state law. On appeal, the Trustee argues
9 that the court erred in both respects. We find that the
10 bankruptcy court did not err in overruling the objection to the
11 state law exemption.

12 We AFFIRM the bankruptcy court.

13 **FACTS**

14 **Debtor's bankruptcy petition.** Debtor filed a voluntary
15 chapter 7 petition in August 2015. On Schedule B, he listed the
16 "Pomeroy Retirement Trust" (the "Plan") and disclosed that it
17 included: (1) property in Truckee, California valued at \$185,000
18 (the "Property"); (2) a Wells Fargo deposit account with balance
19 of \$170,780.74; and (3) a Scottrade account valued at
20 \$53,602.27. He claimed the full amount as exempt on Schedule C
21 under California Code of Civil Procedure ("CCP")
22 § 703.140(b)(10)(E).

23 On Schedule I, Debtor reported that he was a "Chip
24 Runner/Dealer" at a casino, where he made \$2,130.44 per month in
25 gross income; he reported his take-home pay as \$1,563.90. He
26

27 ¹ Unless otherwise indicated, all chapter and section
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 also reported an additional \$1,800 per month in income from
2 "[c]ontributions from room mate". His combined monthly income,
3 thus, was \$3,363.90. Debtor's Schedule J expenses totaled
4 \$3,715 per month, resulting in a monthly net income of -\$351.10.
5 He noted: "Girlfiend [sic] helps with living expenses on some
6 rare occasions [sic] when she can but is not responsible for any
7 of the bills".

8 **The Trustee objects to Debtor's exemption.** In February
9 2016, the Trustee timely objected to Debtor's exemption of the
10 Plan under CCP § 703.140(b)(10)(E).

11 In response, Debtor amended Schedule C. He now claimed the
12 Plan exempt under CCP § 703.140(b)(10)(E) for \$409,383.01 of the
13 \$409,383.01 value and § 522(b)(3)(C) for 100% of the value.

14 The Trustee then timely filed an amended objection to
15 include the § 522(b)(3)(C) exemption claim. The Trustee argued,
16 in part, that Debtor's Schedule I was inaccurate: Debtor was
17 receiving "off the books" quarterly payments of more than
18 \$2,000, directed towards repayment of a loan from Plan assets;
19 at the § 341(a) meeting, Debtor acknowledged the loan was made
20 with Plan assets, but admitted that the repayments went to his
21 personal bank account.

22 Debtor opposed. He provided supporting declarations from:
23 Ben Eastman, who advised Debtor about the Plan; David M. Kahn,
24 an attorney; and himself.

25 Debtor declared, among other things: First, he hired Ben
26 Eastman to create the Plan in 1994 and has used him for advice
27 and as the Plan administrator ever since. Second, due "to a
28 divorce in 2009," he "had to make changes to [his] retirement

1 plan provisions." Third, his "live in girl friend" contributed
2 \$1,800 per month to help with the household expenses, "which are
3 all in [his] name." Accordingly, he "cannot hold her to this
4 contribution and in fact she lost her job in February and I am
5 right now relying on her contribution of her unemployment claim
6 to keep the expenses going." And if "she leaves, and we have
7 had our rough patches and neither of us foresees marriage, I
8 would be reduced to living in the cargo van trailer or
9 purchasing another Recreational Vehicle to continue my dwelling
10 needs." Fourth, he is "56 years old with a future employment
11 duration of perhaps 10 years until retirement." In particular,
12 he has "been treated for nervousness and anxiety disorders and
13 could have to take retirement early." If he does, he
14 "calculated that [he] would receive \$2200 per month maximum from
15 Social Security" and had no other retirement funds.

16 Debtor also sought to explain the \$2,000 quarterly
17 payments. He said that, on Mr. Eastman's advice, he decided to
18 treat the repayments as a hardship distribution and
19 correspondingly would amend three years of tax filings: "I was
20 informed about my alternative option to take it as a participant
21 loan and have determined that the hardship distribution will
22 better serve the retirement trust and myself in the long run."

23 The Trustee replied.

24 The court heard the matter and entertained oral argument.
25 Hr'g Tr. (May 4, 2016).² It then continued the matter to allow

26
27 ² The bankruptcy court had apparently issued a tentative
28 ruling in advance of the hearing. See Hr'g Tr. (May 4, 2016)

(continued...)

1 Debtor to supplement the record. Debtor did so, and the Trustee
2 again replied. After another hearing, the bankruptcy court took
3 the matter under submission.³

4 The next week, the bankruptcy court issued its memorandum
5 decision, discussed in more depth below, overruling the
6 Trustee's objection and allowing the exemption in its entirety
7 under CCP § 703.140(b)(10)(E) and § 522(b)(3)(C). Memorandum
8 Decision, June 21, 2016 ("Mem. Dec."). That same day, the court
9 entered its order overruling the Trustee's objection.

10 The Trustee timely appealed.

11 JURISDICTION

12 The bankruptcy court had jurisdiction under 28 U.S.C.
13 §§ 1334 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C.
14 § 158.

15 ISSUE

16 Whether the bankruptcy court erred in overruling the
17 Trustee's objection and upholding Debtor's claimed exemption in
18 the Plan.

19 STANDARD OF REVIEW

20 We review de novo a debtor's right to claim an exemption.

21 _____
22 ²(...continued)
23 14:5-9 ("[W]hat I anticipate doing is giving the debtor an
24 opportunity to supplement the record, to address what I have
25 raised in the tentative, and I will continue it; and in all
likelihood, I will also address the 703 issue."). The parties
did not provide us with a copy.

26 ³ Again, the bankruptcy court issued a tentative ruling in
27 advance of the hearing. See Hr'g Tr. (June 15, 2016) 3:13-14
(The Court: "The court has issued a lengthy tentative.").
28 Again, the parties did not provide us with a copy.

1 Kelley v. Locke (In re Kelley), 300 B.R. 11, 16 (9th Cir. BAP
2 2003). We review the bankruptcy court's factual findings for
3 clear error. Id.; Gonzalez v. Davis (In re Davis), 323 B.R.
4 732, 734 (9th Cir. BAP 2005) ("The court's findings regarding
5 the necessity of retirement accounts for debtor's support are
6 reviewed for clear error."). A factual finding is clearly
7 erroneous if illogical, implausible, or without support in
8 inferences that may be drawn from the facts in the record. See
9 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832
10 (9th Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247,
11 1262 (9th Cir. 2009) (en banc)).

12 **DISCUSSION**

13 "When a debtor files a Chapter 7 bankruptcy petition, all
14 of the debtor's assets become property of the bankruptcy estate,
15 see 11 U.S.C. § 541, subject to the debtor's right to reclaim
16 certain property as 'exempt,' § 522(1)." Schwab v. Reilly,
17 560 U.S. 770, 774 (2010). Unless a party in interest objects, a
18 debtor's claimed exemption "is exempt." 11 U.S.C. § 522(1).

19 We start by clarifying the scope of the appeal: it
20 exclusively concerns the Property. Debtor claimed the entire
21 Plan, comprised of three assets (the Property and two accounts),
22 as exempt. The bankruptcy court concluded that the entire
23 retirement plan was exempt under § 522(b)(3)(C) and CCP
24 § 703.140(b)(10)(E). The Trustee does not dispute the Scottrade
25 or Wells Fargo exemptions. See Appellant's Reply Br. at 1
26 ("Although Trustee sought in the bankruptcy court to disallow
27 all of Debtor's Plan Assets . . . , Trustee is focusing his
28 appeal solely on the Truckee Lot."). Accordingly, this appeal

1 turns on whether the Property may be exempted under either
2 statute: First, is the value the Property brings to the Plan
3 reasonably necessary for Debtor's support under CCP
4 § 703.140(b)(3)? Second, is the term "retirement funds" in
5 § 522(b)(3)(C) broad enough to include real property?⁴ Because
6 we conclude that the bankruptcy court properly upheld the CCP
7 § 703.140(b)(10)(E) exemption, we decline to reach the
8 § 522(b)(3)(C) issue.

9 **A. The bankruptcy court correctly determined that the**
10 **Plan, and thus the Property, was exempt under CCP**
11 **§ 703.140(b)(10)(E).**

12 California's bankruptcy exemption statute allows a debtor
13 to exempt the "debtor's right to receive" "[a] payment under a
14 stock bonus, pension, profitsharing, annuity or similar plan or
15 contract on account of . . . age . . . to the extent reasonably
16 necessary for the support of the debtor . . . unless all of the
17 following" three conditions apply. The bankruptcy court
18 determined, and the Trustee does not challenge, that the Plan
19 was on account of Debtor's age and that at least one of the

20 ⁴ Debtor contends that the Trustee's failure to challenge
21 the bankruptcy court's determination that § 522(b)(4) applied is
22 a separate basis for affirmance. We disagree. Section
23 522(b)(4) is not a separate exemption; it discusses further
24 parameters for § 522(b)(3)(C) and (d)(12). 11 U.S.C.
25 § 522(b)(4) ("For purposes of paragraph (3)(C) and subsection
26 (d)(12), the following shall apply . . ."). It allocates
27 presumptions for determining if an account is tax-exempt,
28 § 522(b)(4)(A), (b)(4)(B), addresses transfers between
tax-exempt accounts, § 522(b)(4)(C), and discusses distributions
that qualify as rollover distributions, § 522(b)(4)(D). The
Trustee does not argue the Plan's tax-exempt status on appeal.
Instead, the Trustee's argument is that the Property does not
qualify as "retirement funds."

1 three conditions was not present.

2 On appeal, the Trustee focuses on the "to the extent
3 reasonably necessary for the support of the debtor" prong; he
4 argues the bankruptcy court erred because it: (1) applied the
5 wrong legal standard; (2) misapplied the standard; and
6 (3) lacked sufficient evidence to make its factual findings. We
7 disagree and consider each in turn.

8 **1. The bankruptcy court applied the correct legal**
9 **standard.**

10 In its decision, the bankruptcy court decided that it "will
11 consider whether the Plan is reasonably necessary for the
12 debtor's support based on what his income and expenses are
13 likely to be in retirement and based on what changes are likely
14 to take place between now and then." Mem. Dec. at 8.

15 On appeal, the Trustee argues that the bankruptcy court
16 applied the wrong legal standard: "The standard is whether the
17 asset is 'reasonably necessary for support,' not whether the
18 asset is 'reasonably necessary for the debtor's support when he
19 retires.'" Appellant's Opening Br. at 16. He contends that the
20 factors listed in Moffat v. Habberbush (In re Moffat), 119 B.R.
21 201 (9th Cir. BAP 1990), aff'd 959 F.2d 740 (9th Cir. 1992), and
22 Hamo v. Wilson (In re Hamo), 233 B.R. 718 (6th Cir. BAP 1999),
23 all focus on a debtor's present needs, not needs some twenty
24 years in the future. He asserts that none of the listed factors
25 include support during retirement. Also, had Congress or the
26 California legislature "wanted to connect assets in a retirement
27 plan with support during retirement," they could have mentioned
28 "the word 'retirement' in connection with support needs"

1 Id. at 19. Next, he suggests that the bankruptcy court
2 improperly inserted "retirement needs" into the required
3 evaluation of what is "reasonably necessary for the support of
4 the debtor"; he contends that none of the other CCP § 703.140
5 exemptions involving "reasonably necessary for the support of
6 the debtor" language involve retirement plans or retirement
7 needs, so neither should CCP § 703.140(b)(10)(E). Id. at 20.

8 The Trustee misses the point. The statute exempts Debtor's
9 right to receive payments to the extent those payments are
10 reasonably necessary for Debtor's support. Here, the Trustee
11 concedes that Debtor will not receive penalty-free payments
12 until he retires.⁵ The relevant inquiry is, thus, whether those
13 payments (when Debtor retires) will be reasonably necessary for
14 Debtor's support. When evaluating the "reasonably necessary"
15 part, courts look to a variety of factors:

16 the debtor's present and anticipated living expenses
17 and income; the age and health of the debtor and his
18 or her dependents; the debtor's ability to work and
19 earn a living; the debtor's training, job skills and
20 education; the debtor's other assets and their
liquidity; the debtor's ability to save for
retirement; and any special needs of the debtor and
his or her dependents.

21 In re Moffat, 119 B.R. at 206.

22 The Trustee's arguments are not persuasive. First, the
23 Moffat factors are discretionary and, what's more, direct the
24 bankruptcy court to consider anticipated (i.e., future and

25
26 ⁵ Of course, Debtor may elect to take hardship
27 distributions early, as he already has. The bankruptcy court
28 determined that "the debtor's right to receive payments under
the Plan without penalty, will, absent a hardship, arise at
retirement age." Mem. Dec. at 8.

1 forward-looking) expenses and income. Second, neither Congress
2 nor the California legislature inserted "retirement" in
3 "reasonably necessary for the support the debtor" because CCP
4 § 703.140(b)(10)(E) also protects the right to receive payments
5 on account of more than just age; it also includes payments on
6 account of disability, death, or length of service. As the
7 bankruptcy court put it, the Trustee's analysis ignores "the
8 nature of the asset exempted by the particular statute"
9 Mem. Dec. at 7. True, "the statute contains the same
10 'reasonably necessary' language as those [statutes] exempting
11 alimony, payments in compensation of lost earnings, and so on,"
12 but the "statutes must be considered in light of the" statute's
13 purpose "and the asset being exempted—here, the right to receive
14 retirement income." Mem. Dec. at 8.

15 Accordingly, we conclude that the bankruptcy court did not
16 apply the wrong legal standard.

17 **2. The bankruptcy court did not misapply the legal**
18 **standard.**

19 Next, the Trustee argues that the bankruptcy court abused
20 its discretion because it misapplied the proper legal standard:
21 it did not separately consider whether "each of the assets was
22 or was not necessary for support, in light of the treatment of
23 the other assets." Appellant's Opening Br. at 21-23. The
24 Trustee focuses on the "to the extent" part of the statute:
25 "where there are three plan assets . . . , the proper analysis
26 under [CCP] § 703.140(d)(10)(E) would have required the court to
27 analyze whether each of the assets was or was not necessary for
28 support, in light of the treatment of the other assets." Id.

1 at 21. If the Wells Fargo and Scottrade Accounts are enough on
2 their own, he urges, then the Property cannot be exempted.

3 We disagree. First, the Trustee faces a logic problem.
4 The bankruptcy court concluded that the entirety of the plan was
5 reasonably necessary for Debtor's support. By definition, then,
6 if one removes any part from the fund, it is no longer enough.
7 Second, considering the bankruptcy court's entire decision, we
8 are not convinced it would find otherwise. Littered throughout
9 are indications that the bankruptcy court suspected that, even
10 with the whole plan exempt, Debtor may not have enough to
11 support himself in retirement.

12 Now, had the bankruptcy court determined that only part of
13 the Plan was reasonably necessary for Debtor's support, then we
14 agree that the bankruptcy court would have needed to separately
15 parse the Plan's assets. Likewise, if we determine that the
16 bankruptcy court clearly erred in finding that the entire Plan
17 was reasonably necessary for Debtor's support because only some
18 lesser amount is reasonably necessary, then we would need to
19 consider the Plan assets individually. But the bankruptcy court
20 did not so determine; nor do we.

21 **3. The bankruptcy court did not clearly err in finding**
22 **that the Plan was reasonably necessary for Debtor's**
support.

23 The bankruptcy court framed the issue as: "Thus, assuming
24 the debtor does not need to take hardship distributions from the
25 Plan in the next nine years (and the evidence suggests he may
26 need to), the court will need to consider whether \$409,383 in
27 assets is reasonably necessary for 18 years of retirement."
28

1 Mem. Dec. at 8.⁶ After weighing the various factors and
2 considering Debtor's petition and declarations, the bankruptcy
3 court concluded:

4 In short, given the debtor's age, his likely life
5 expectancy, his meager income at this time and likely
6 for the rest of his working life, the relatively
7 modest amount he may expect from social security in
8 retirement, the very basic level of his living
9 expenses, and the fact that he has little, if any,
10 assurance of being able to meet those expenses while
11 he is still working, let alone after retirement, the
12 court readily concludes the Plan is reasonably
13 necessary for the debtor's support

14 Id. at 13.

15 On appeal, the Trustee contends that Debtor failed to meet
16 his burden of proof because he did not provide enough evidence
17 to show that the Plan was reasonably necessary for his support.
18 Accordingly he contends that the bankruptcy court clearly erred
19 because it lacked sufficient evidence. We disagree. Everyone
20 agrees that Debtor had the burden of proof. Diaz v. Kosmala
21 (In re Diaz), 547 B.R. 329, 336-37 (9th Cir. BAP 2016). And
22 Debtor submitted a declaration about his needs. The Trustee
23 submitted no counter-evidence of his own; instead, he relies on
24 the burden of proof and repeatedly argues that Debtor's
25 declaration provided nothing but speculation, which he asserts
26 is not admissible evidence. But he appears to fundamentally

27 ⁶ To reach the "18 years" number, the bankruptcy court
28 took judicial notice of Social Security Administration
calculator. In his reply, the Trustee faults the court for
"going outside the record to find an online document"
Appellant's Reply Br. at 19. But, having failed to raise that
issue in his opening brief, the Trustee waived the point. Kaass
Law v. Wells Fargo Bank, N.A., 799 F.3d 1290, 1293 (9th Cir.
2015).

1 misunderstand the nature of the proceedings below: the
2 bankruptcy court received evidence and found facts. The Trustee
3 could have put on evidence; he could have cross-examined Debtor.
4 But he did not do so.

5 The Trustee argues that because Debtor's income is
6 sufficient to meet his current needs without drawing from the
7 Plan, the Plan is not reasonably necessary for his support. The
8 Trustee asserts that this analysis holds true even when Debtor
9 retires because Debtor's anticipated social security income
10 (\$2,200 per month) would substitute for his present income
11 (\$2,130 per month).

12 But the Trustee's argument suffers a major flaw. He
13 acknowledges that Debtor's Schedule I income includes Debtor's
14 girlfriend's contributions (\$1,800). The bankruptcy court,
15 however, did not include those contributions in its analysis:
16 "Although the debtor presently receives contributions from his
17 girlfriend, she is under no legal obligation to continue making
18 them. For purposes of this analysis, the court declines to
19 assume she or anyone else will be willing and able to contribute
20 to the debtor's household income once he retires." Mem. Dec.
21 at 12. The Trustee faults the bankruptcy court for this: "The
22 Debtor's statements concerning his girlfriend's contributions to
23 their mutual living expenses are nothing more than speculation
24 about what might happen in the future." Appellant's Opening Br.
25 at 27. He continues: "Based on the admissible evidence before
26 the court, it is as likely that the status quo will continue as
27 that it will change." Id. But we review the bankruptcy court's
28 factual finding for clear error, and "[w]here there are two

1 permissible views of the evidence, the factfinder's choice
2 between them cannot be clearly erroneous." Anderson v. City of
3 Bessemer City, 470 U.S. 564, 574 (1985). As a result, the
4 Trustee's argument overestimates Debtor's anticipated income by
5 \$1,800 per month.

6 The Trustee, perhaps, misunderstands the standard of
7 review. In his reply brief, the Trustee asserts: "The
8 bankruptcy court made assumptions and **inferences** as to each of
9 these items [i.e., Debtor's projected expenses in ten years, the
10 value of Debtor's Plan's assets in ten years, Debtor's likely
11 medical expenses in ten years, or Debtor's life expectancy]
12 (**mostly extrapolating from Debtor's present situation**), but they
13 were not based on evidence presented by Debtor concerning his
14 anticipated income and expenses." Appellant's Reply Br. at 19
15 (emphasis added). A bankruptcy court does not clearly err when
16 it makes findings that are supported by inferences in the
17 record. See Hinkson, 585 F.3d at 1262.

18 The Trustee never separately argues that, even if the
19 bankruptcy court is correct about Debtor's income and expenses,
20 its determination that \$409,383 in assets is reasonably
21 necessary for 18 years of retirement was an error. But we
22 briefly consider the numbers. We take the \$409,383 total,
23 divide it by 216 months of retirement, and reach about \$1,895
24 per month. Given Debtor's anticipated \$2,200 per month in
25 social security income, Debtor's anticipated monthly income when
26 he retires would then be \$4,095; Debtor's present monthly
27 expenses are \$3,315; that results in \$780 in positive monthly
28 income. Of course, the bankruptcy court also determined: first,

1 that the Plan's value will not grow significantly in the next
2 10 years; second, that Debtor likely will need to use the assets
3 before he retires (depleting the amount); and third, that
4 Debtor's expenses in retirement will likely increase. Given
5 these substantial uncertainties, we conclude that the bankruptcy
6 court did not clearly err in finding that \$409,383 is reasonably
7 necessary for Debtor's retirement.

8 The Trustee also asserts that the \$315 monthly shortfall
9 between Debtor's Schedule I and J is illusory because Debtor did
10 not include in Schedule I the \$2,000 quarterly repayments on the
11 Plan's loan, which Debtor was depositing into his personal
12 account and not returning to the Plan. The bankruptcy court,
13 however, concluded that Debtor's interest in the quarterly
14 payments (\$333 per month, after accounting for Debtor's ex-
15 spouse's interest) was "not sufficient to alter the court's
16 conclusion as to the reasonably necessary test." Mem. Dec.
17 at 9-10 n.4. This was not clear error.

18 Further, these circumstances undercut the Trustee's general
19 point. He argues that the Plan is not reasonably necessary for
20 Debtor's support because Debtor's presents needs are met. But,
21 to meet his needs, Debtor decided to take hardship distributions
22 from the Plan and suffer the corresponding tax penalties.
23 Debtor is thus effectively already using the Plan; he may
24 continue to need it in the future. See Mem. Dec. at 8-9 ("Thus,
25 assuming the debtor does not need to take hardship distributions
26 from the Plan in the next nine years (and the evidence suggests
27 he may need to), the court will need to consider"); id.
28 at 13 ("Without [the \$1,800 monthly contribution from his

1 girlfriend], the debtor would need to deplete the Plan assets
2 significantly even before he retires.”).

3 In short, the bankruptcy court looked at Debtor’s age, life
4 expectancy, present and anticipated income and expenses, assets,
5 future employment prospects, and other things; it relied on
6 Debtor’s testimony and Debtor’s schedules, which were submitted
7 under penalty of perjury. The Trustee believes that this was
8 clear error because Debtor’s testimony was inadmissible as
9 offering only speculation. We disagree. Having reviewed the
10 record, we are not left with the firm conviction that the
11 bankruptcy court made a mistake. See Hinkson, 585 F.3d at 1262.

12 **B. We need not reach the § 522(b)(3)(C) exemption.**

13 The bankruptcy court also determined that the Property was
14 properly exempt under § 522(b)(3)(C) because it fell within the
15 purview of the phrase “retirement funds.” On appeal, the
16 parties devote substantial briefing to this point. But, as the
17 Trustee acknowledges, to prevail in this appeal he has to show
18 that the bankruptcy court erred in relation to both exemptions.
19 Having concluded that the Property is exempt under CCP
20 § 703.140(b)(10)(E), we need not decide the § 522(b)(3)(C)
21 matter.

22 **CONCLUSION**

23 Based on the foregoing, we AFFIRM.
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28