Appeal No. 15-16015

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MIDLAND INNOVATIONS, NV,
Plaintiff/Appellee,

v.

WEILAND INTERNATIONAL INC. & WEN WANG,
Defendants,

HONGDI REN,
Real-party-in-interest,

and

WEIPING CHEN,
Real-party-in-interest/Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
THE HONORABLE NANDOR J. VADAS, MAGISTRATE JUDGE
THE HONORABLE CLAUDIA WILKEN, JUDGE
CASE NO. 4:07-MC-80257-CW

APPELLANT WEIPING CHEN'S REPLY BRIEF

ANNA-ROSE MATHIESON
BEN FEUER
AUDRA IBARRA
CALIFORNIA APPELLATE LAW GROUP LLP
96 Jessie Street
San Francisco, California 94105
Telephone: (415) 649-6700

Attorneys for Real-party-in-interest/Appellant Weiping Chen

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INTRODUCTION

Appellant Weiping Chen purchased a home entirely with her separate property, so under California law it remains her property absent a valid transmutation to community property. Appellee Midland Innovations, NV ("Midland") does not dispute that there was no valid transmutation in this case. Instead, Midland bases its entire claim to Chen's home on the assertion that the title presumption should control, even though the California Supreme Court held the transmutation statute trumps the title presumption when the two doctrines conflict. *In re Marriage of Valli*, 324 P.3d 274, 280 (Cal. 2014). Midland's only response is to assert that *Valli* dealt with a marital dissolution action, and the transmutation requirements do not apply in any other proceeding.

Midland is right that *Valli* arose in the context of a marital dissolution case, but wrong about everything else. The statutory language, state case law, and this Court's decisions all establish that the transmutation requirements apply broadly to proceedings such as this. At best for Midland, there is a conflict between the transmutation requirements and the title presumption, and there are at least four reasons the transmutation requirements take precedence over the title presumption in the event of conflict. *First*, the transmutation statute is more recent and more specific than the title presumption, so under California principles of statutory construction it is controlling. *Second*, the legislative history shows the transmutation statute was enacted at least in part to overrule earlier cases that

placed too much weight on the title presumption at the expense of a spouse's property rights. *Third*, the transmutation requirements should control to prevent inconsistent and unpredictable results. *Finally*, equitable concerns counsel in favor of the transmutation requirements because California law contains other protections for bona fide purchasers, lenders, or others who might have relied on the terms of a title.

Chen paid for the entire house with her separate property, and now faces eviction from the home where she has lived with her children for over a decade. Midland is seeking a windfall based on the wording of the title, even though it never lost a cent based on that wording. Forced sale of Chen's home to pay an entirely unrelated default judgment against someone else is unfair and improper.

I. MIDLAND INCORRECTLY ANALYZES CALIFORNIA LAW ON TRANSMUTATION, WHICH ESTABLISHES THAT THE HOUSE REMAINS CHEN'S SEPARATE PROPERTY

A. California's Transmutation Statute Applies to This Proceeding

Midland argues that *Valli*, 324 P.3d at 280, dealt with a marital dissolution issue, and because the "instant case does not involve such a dispute . . . the title presumption prevails (and any transmutation issue is irrelevant)." Answering Br. 3, 16. Midland is incorrect.

Midland cites no authority for its suggestion that California's transmutation statute is limited to the marital dissolution context, and there is none. *Valli* did

arise in the context of a marital dissolution proceeding, as Chen's Opening Brief acknowledged (Opening Br. 29 & n.15), but California statutes as well as state and federal case law require the same conclusion in this context.

1. *Statutory language and structure*. Some provisions of the California Family Code are explicitly limited to marital dissolution proceedings, but the transmutation statute (Fam. Code § 852) is not one of them.[1] Family Code section 2581, for instance, creates a presumption that property held during marriage in joint form is community property, but that presumption only applies "[f]or the purpose of division of property on dissolution of marriage or legal separation of the parties." Fam. Code § 2581 (West 2016). Similarly, an entire section of the Family Code is limited to dissolution proceedings. *See* Fam. Code § 2000 (West 2016) ("This part applies to a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties."). The legislature clearly knew how to limit provisions to the dissolution context, but chose not to set out any limit for the transmutation requirements.

The statutory context confirms that the transmutation analysis is not limited to marital dissolution proceedings. The provision immediately before section 852, for instance, provides "[a] transmutation is subject to the laws governing fraudulent

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[1] All code citations are to California statutes. All docket citations are to the district court docket in this case unless otherwise noted.

transfers." Fam. Code § 851 (West 2016). That provision would be entirely irrelevant if the transmutation requirements only applied between spouses in marital dissolution proceedings; because a valid transmutation requires the express consent of the spouse giving up the interest in the property, the other spouse would never have reason to claim the property they received was somehow the result of a fraudulent transfer.

2. *State case law*. While many of the cases where parties are fighting over marital property arise in the context of marital dissolution proceedings, California courts have never hesitated to apply the transmutation requirements to claims outside the dissolution context. Indeed, the seminal case interpreting the transmutation statute was not a dissolution case, but rather a probate proceeding. *Estate of MacDonald*, 794 P.2d 911, 918 (Cal. 1990); *see also*, *e.g.*, *Estate of Bibb*, 104 Cal. Rptr. 2d 415, 419-20 (Ct. App. 2001).[2] The California courts have applied the transmutation statute in cases ranging from suits against a state agency to recover taxes (*State Bd. of Equalization v. Woo*, 98 Cal. Rptr. 2d 206, 208 (Ct.

[2] Under California law, probate actions upon the death of one spouse are not "marital dissolution" proceedings. *E.g.*, *Estate of Blair*, 244 Cal. Rptr. 627, 630 (Ct. App. 1988); *In re Marriage of Williams*, 161 Cal. Rptr. 808, 809 (Ct. App. 1980). A statute applicable only in a marital dissolution proceeding does not apply in a probate proceeding. *Blair*, 244 Cal. Rptr. at 630.

App. 2000)) to breach of contract claims against a company (*Estate of Quon*, No. B257493, 2015 WL 3455432, at *5 (Cal. Ct. App. June 1, 2015) (applying *Valli*)).

While Midland focuses on the language in *Valli* framing the case in the marital dissolution context (Answering Br. 20-22), there is nothing in *Valli* holding the transmutation statute does *not* apply outside the dissolution context. And *Valli*'s analysis supports application here for at least two reasons. First, *Valli* relied heavily on *Estate of MacDonald* for its understanding of the transmutation requirements (*Valli*, 324 P.3d at 276-77), and as noted above *MacDonald* did not arise in the dissolution context. Second, *Valli* spent time criticizing and rejecting the analysis of *In re Summers*, 332 F.3d 1240 (9th Cir. 2003), as not going far enough to enforce the transmutation requirements. *Valli*, 324 P.3d at 279 (*Summers* and a state case are "not persuasive insofar as they purport to exempt from the transmutation requirements purchases made by one or both spouses from a third party during the marriage"). *Summers* involved a bankruptcy proceeding outside the dissolution context, so if the transmutation requirements did not apply at all the court could have simply said so.

3. *Federal case law*. This Court has similarly applied California's transmutation requirements outside of the marital dissolution context. *See United States v. Chavez*, 323 F.3d 1216, 1219 (9th Cir. 2003) (in forfeiture context, concluding forfeiture occurred before attempted transmutation); *Spicer v. Cecconi*, 413 F. App'x 976, 977-78 (9th Cir. 2011) (unpub.) (in bankruptcy proceeding,

holding that wife had not transmuted her separate property into community property by placing husband's name on title). Indeed, even *Summers* never expressed any doubt that the transmutation statute would apply outside the marital dissolution context—it simply held it did not apply to the particular type of interspousal transaction at issue there. *Summers*, 332 F.3d at 1244-45 (disapproved by *Valli*, 324 P.3d at 279-80).

In sum, Midland is simply wrong to suggest that California's transmutation requirements apply only to a dissolution proceeding.

B. The Transmutation Statute Takes Precedence over the Title Presumption

Since the transmutation statute applies here, a facial conflict may seem to exist between the transmutation statute and the title presumption—both appear to apply to a dispute over the ownership of property purchased with one spouse's separate property but titled as community property. *Valli* resolved this exact conflict and found the transmutation provision trumps the title presumption in a marital dissolution action. 324 P.3d at 280. There are at least four reasons the same result applies in the context of this case.

1. The transmutation statute was enacted after, and is more specific than, the title presumption

In California, a fundamental principle of statutory construction is that "a later, more specific statute controls over an earlier, general statute." *Woods v.*

Young, 807 P.2d 455, 460 (Cal. 1991); *Rose v. State*, 123 P.2d 505, 512 (Cal. 1942) ("A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates."); *see also* Code Civ. Proc. § 1859 (West 2016) ("[W]hen a general and particular provision are inconsistent, the latter is paramount to the former.").

California enacted its transmutation statute long after the title presumption statute. *Compare* Evid. Code § 662 (West 2016) (title presumption effective 1967) *with* Fam. Code § 852 (current transmutation statute effective 1994) *and* Civ. Code § 5110.730 (original transmutation statute effective 1985).[3] And the transmutation statute is far more specific than the title presumption: The transmutation requirements only apply to a specific type of property transfer involving a married couple (Fam. Code § 852), while the title presumption is a general evidentiary presumption applicable to any type of proceeding (Evid. Code § 662).

California appellate courts have faced similar conflicts between the transmutation statute and other statutory presumptions in a wide range of cases, and *every time* the courts have held that the transmutation statute is more specific

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[3] This statute was replaced by the current transmutation statute: "Section 852 continues former Civil Code Section 5110.730 without change." Fam. Code § 852, Law Rev. Comm'n cmts.

and thus controlling. In *Estate of Bibb*, for instance, the court examined the conflict between the vehicle title presumption and the transmutation requirements. 104 Cal. Rptr. 2d at 419-20. The Vehicle Code provides that all vehicles "registered in the names of two (or more) persons as coowners . . . shall be deemed to be held in joint tenancy." Veh. Code § 4150.5(a). The vehicle title presumption is much narrower than the general title presumption Midland relies on in this case—it (obviously) applies only to vehicles, and sets out specific consequences for titling a vehicle in a particular way. *Id.* § 4150.5(a) & (c) (providing that listed owners are joint tenants if the vehicle is titled with "the use of the word 'or,'" while they are co-owners in the conjunctive with "the use of the word 'and'"). Yet the court still held that the transmutation requirements were more specific than the vehicle title presumption, and the transmutation statute thus controlled. *Estate of Bibb*, 104 Cal. Rptr. 2d at 420-21. As the court explained, important California public policy goals are at stake: "the more general form of title presumption created by Vehicle Code . . . should not be used to negate the requirements of [the transmutation statute], which assure that a spouse's separate property entitlements are not undermined." *Id.* at 421.

Similarly, California courts have held that the transmutation requirements control over the joint title presumption set out in Family Code section 2581. *In re Marriage of Lafkas*, 188 Cal. Rptr. 3d 484, 499-500 (Ct. App. 2015), *review denied* (Sept. 9, 2015). That code section applies only to "division of property on

dissolution of marriage or legal separation of the parties," and provides that property acquired during a marriage in joint form "is presumed to be community property." Fam. Code. § 2581. Even though the joint title presumption applies only in certain limited contexts, the court still found the transmutation statute narrower (and thus controlling), explaining that "[t]he writing requirement under section 852 is more specific than the general presumption based on the form of title under section 2581, and is more consistent with the legislative intent to require spouses to expressly acknowledge the change in character beyond simply stating a form of title." *Lafkas*, 188 Cal. Rptr. 3d at 499.

Likewise, the transmutation requirements are more specific and thus control over Family Code section 2640, which sets out specific reimbursements provisions for spouses that contribute assets to the purchase of community property. *In re Marriage of Bonvino*, 194 Cal. Rptr. 3d 754, 770-71 (Ct. App. 2015). And of course, California courts have held "the more specific rules governing transmutations of property in transactions between spouses should control over the more general presumption of ownership from title created by Evidence Code section 662." *In re Marriage of Barneson*, 81 Cal.Rptr.2d 726, 733 (1999); *Valli*, 324 P.3d at 280.

Some of the cases discussed above arise in the marital dissolution context, but that makes no difference here. Perhaps the closest analogy (other than *Valli*) is the vehicle title statute discussed in *Estate of Bibb*—and that case arose outside of

the dissolution context and squarely held that the transmutation statute took precedence over the vehicle title presumption. 104 Cal. Rptr. 2d at 420-21. More broadly, the rule that the later, more specific statute controls is a general principle of statutory construction not dependent on the facts of any given case. *See, e.g.*, *Woods*, 807 P.2d at 460.

California courts have, time after time, found the transmutation statute controlling over other broad statutes. The same result applies here. The general title presumption should not be used to negate the specific requirements of the transmutation statute.

2. Legislative history supports application of the transmutation requirements here

Not only did California enact its transmutation statute later than its title presumption statute, but it did so in part to overrule prior law that placed too much weight on the title presumption. In a case called *Lucas*, the California Supreme Court had held that the title presumption controlled over the transmutation requirements, so proof that property was purchased with separate funds could not defeat the title presumption absent evidence that the spouses had agreed to hold the property other than as stated in the title. *In re Marriage of Lucas*, 27 614 P.2d 285, 289-291 (Cal. 1980) ("The act of taking title in a joint and equal ownership form is inconsistent with an intention to preserve a separate property interest. Accordingly, the expectations of parties who take title jointly are best protected by

presuming that the specified ownership interest [as stated on the title] is intended in the absence of an agreement or understanding to the contrary."), *superseded by statute as recognized in Valli*, 324 P.3d at 280 n.2.

But this holding "'was widely considered to cause injustice to persons who contributed their separate funds for use by the community and then lost the funds entirely to the community at dissolution of marriage. Often the parties were unaware that taking title in joint tenancy had the effect of making a gift of the separate property to the community.'" *Bonvino*, 194 Cal. Rptr. 3d at 769 (quoting Fam. Code § 2580, Law Rev. Comm'n cmts.).

In response to *Lucas* and to overrule its holding, the California Legislature enacted a variety of new statutes, including the transmutation requirements of former Civil Code sections 5110.710 through 5110.740, now Family Code sections 850 through 853. *See Valli*, 324 P.3d at 280 n.2 (transmutation statute "abrogated earlier judicial decisions" such as *Lucas* that held a spouse's agreement to put title in other spouse's name changed the character of the property); *Lafkas*, 188 Cal. Rptr. 3d at 496; *see also* Cal. Law Revision Comm'n, *Recommendations Relating to Marital Property Presumptions & Transmutations*, 17 Cal. L. Rev. Comm'n Rep. 205, 209-17 (1984).

Midland focuses on statements in the legislative history expressing concern about spouses using unreliable evidence to claim an oral transmutation in a marital dissolution proceeding. Answering Br. 20-21. But the fact that unreliable

evidence in dissolution proceedings was one concern motivating the passage of the statute does not mean it was the only concern. The transmutation statute was also "enacted, at least in part, to prevent spouses from making unintentional gifts of property." *Lafkas*, 188 Cal. Rptr. 3d at 499; *Estate of Bibb*, 104 Cal. Rptr. 2d at 420-21. And there are certainly no grounds for reading an implied limit into the statutory language when the Legislature declined to add any explicit limit.

3. The transmutation statute trumps the title presumption to prevent inconsistent and unpredictable results

In *Valli*, the California Supreme Court squarely held that when the transmutation requirements conflict with the title presumption in a marital dissolution proceeding, the transmutation requirements prevail. *Valli*, 324 P.3d at 280. Applying a different rule in other proceedings would make the ownership of property depend on which type of proceeding is initiated first.

If Chen and Wang had been married, and Chen filed for divorce, the transmutation requirements would apply under *Valli* and the house would be Chen's alone. It makes no sense to apply a different rule when a creditor initiates suit based on a debt of a spouse—particularly because, as explained below, California law provides other protections that ensure fairness for bona fide purchasers, lenders, and others who might rely on the terms of the title. *See* Section I.B.4, *infra*.

The *Lafkas* court faced a similar conflict following the decision in *Valli*, and stressed the benefits of having the same rule apply regardless of the type of proceeding. *Lafkas*, 188 Cal. Rptr. 3d at 499. The court there examined a conflict between the transmutation statute and the joint title presumption of Family Code section 2581, which provides jointly-titled property is presumed to be community property upon dissolution. The husband conveyed his separate property to himself and his wife as joint tenants during marriage, and at dissolution the wife argued that she was thus entitled to half of the property. *Id.* at 488-89. Faced with a conflict between the joint title presumption and the transmutation statute, the court held the transmutation provision should control, noting this would avoid "the absurd consequence of treating [the asset] as separate property if [the parties] remained married but community property if they separated or the marriage was dissolved." *Id.* at 499. As the court explained, "[w]e decline to interpret the statutory scheme in a manner resulting in different characterizations of the ownership of property based upon the fortuities of death, dissolution, or separation." *Id.* at 499-500. The transmutation provision should control here as well to avoid the "absurd" result of having the ownership of property be dependent on the type of proceeding, which in some cases could trigger a race to the courthouse.

Consider a different hypothetical. If Chen and Wang had been married, and the house purchased with community funds but titled solely in Chen's name,

Midland would surely now be arguing that spouses cannot evade community debts simply by the way they title property. And Midland would be *right* in that situation. A community asset is subject to forfeiture and levy based on one spouse's debts, even if the property is titled solely in the other spouse's name. *E.g.*, *Wikes v. Smith*, 465 F.2d 1142, 1147 (9th Cir. 1972). The reason is simple: California law looks behind the title presumption to assess the true ownership of property as between spouses. Absent a valid transmutation, property purchased with community assets is community property, while property purchased with separate property remains that spouse's separate property.

4. Fairness and equitable concerns favor giving priority to the transmutation statute

In a dispute over the ownership of property purchased with one spouse's separate property but titled as community property, equitable concerns favor giving priority to the transmutation provision over title presumption. The transmutation provision protects the property of a spouse who may not have known or understood the consequences of a specific legal form of title. *Estate of Bibb*, 104 Cal. Rptr. 2d at 420-21; *Lafkas*, 188 Cal. Rptr. 3d at 499; Cal. Law Revision Comm'n, *supra*, at 211 ("[c]onvenience, concerns with insurance, taxation or probate, or chance may be more likely to determine which spouse purchases or takes title to a given item than is an independent decision of the spouses as to ownership"). There is no other protection in California for these spouses.

By contrast, the title presumption is based on concerns for "the stability of titles" (*In re Marriage of Haines*, 39 Cal. Rptr. 2d 673, 684 (Ct. App. 1995)), but several other provisions exist to protect those interests.[4] For instance, "a bona fide purchaser for value who acquires his interest in real property without notice of another's asserted rights in the property takes the property free of such unknown rights." *Melendrez v. D & I Inv., Inc.*, 26 Cal. Rptr. 3d 413, 424 (Ct. App. 2005) (citations and quotation marks omitted). Similarly, while California law provides that both spouses must join in any instrument transferring or encumbering community real property (Fam. Code § 1102(a)), it provides that if either spouse "hold[s] the record title" then a transfer or encumbrance by that spouse is presumed valid as to someone who took it "in good faith without knowledge of the marriage relation." *Id.* § 1102(c)(2).[5] And the Family Code further provides that a

[4] Midland seems to have misunderstood Chen's argument on this point. The argument is not that the title presumption *only* applies to bona fide purchasers, as Midland suggests (Answering Br. 23-25). Rather, the point is that, faced with a conflict between the transmutation statute and the title presumption, the title presumption should prevail because bona fide purchasers have other protections.

[5] As the Opening Brief explained and Midland does not dispute, California law does not require or expect titles to accurately reflect the beneficial interest as between spouses. Opening Br. 21-22. This statute further illustrates that point; section 1102 applies to community property that is nevertheless held in the sole name of one spouse. Fam. Code § 1102(c).

transmutation is subject to the laws governing fraudulent transfers. Fam. Code § 851.

The equitable concerns are starkly illustrated in this case. If this Court finds that the title presumption holds priority over California transmutation law, Chen will entirely lose her separate property, the home she lives in with her children and purchased with the money her family saved, due to a debt that is not in any way her fault or under her control.[6] Midland is not a bona fide purchaser for value nor a lender on the property—and if it had been it would be protected by other doctrines. A home should not be taken from the person who paid for it and lives in it to pay an unrelated debt owed by another.

[6] In addition, as Hongdi Ren notes in her briefs in the related appeal, the original complaint filed in the New York action appears to have been based on fraud. No. 15-16016, Dkt. 6, at 7. Midland filed suit on March 21, 2005 (ER 141), stating in the complaint that it owned the patent "[a]t all relevant times" (ER 142). But the inventor did not actually sign the agreement assigning Midland the patent until June 29, 2005, more than three months *after* Midland filed suit, and there is no reason to think any damage to Midland occurred after it actually owned the patent. No. 15-16016, Dkt. 6, at 7 (citing U.S. Patent and Trademark Office, Assignment Search, *available at* http://assignment.uspto.gov/#/abstract?fq=applNum%3A29069237).

C. Because There Was No Valid Transmutation, the House Remains Chen's Sole Property

If this Court holds the transmutation statute trumps the title presumption in the event of conflict, as it should, judgment must be entered for Chen.

Midland does not dispute that property a spouse acquires by gift during marriage is separate property. *See* Cal. Const. art. I, § 21; Fam. Code § 770(a)(2) (West 2016); *In re Marriage of Camire*, 164 Cal. Rptr. 667, 670 (Ct. App. 1980). Nor does Midland dispute that "[p]roperty that a spouse purchases with separate property funds continues to be separate property." *Bonvino*, 194 Cal. Rptr. 3d at 762; Fam. Code § 770(a)(3).

Midland never argues there was a valid transmutation in this case from Chen's separate property to community property. Nor could it. A transmutation requires a writing that must "expressly state[] that the characterization or ownership of the property is being changed." *Estate of MacDonald,* 794 P.2d at 918; *Estate of Petersen*, 34 Cal. Rptr. 2d 449, 455 (Ct. App. 1994); Fam. Code § 852(a). The only writing here is the deed, but that fails the strict transmutation test for all the reasons set out in the Opening Brief, pages 30-34. There is nothing in the deed unambiguously indicating Chen's intent to change the character of her separate property.

The *only* argument Midland makes to show the house is not Chen's separate property under the transmutation statute is a halfhearted attempt to suggest that, perhaps, Chen's father intended to give the million-plus dollars to both Chen and

Wang, because he allegedly entered into a business arrangement with Wang half a year later. *See* Answering Br. 37.[7]

Midland's suggestion is pure speculation entirely at odds with the evidence in the record. Chen's father wired the entire purchase price for the house directly into a bank account his daughter held in her sole name. ER 237. The closing statement for the house reflects that Chen alone contributed the funds. ER 232, 253. Both Chen and her father submitted sworn declarations stating that the money was a gift to Chen alone. ER 115, 135. The district court made no findings that would support Midland's speculation, and there would have been no basis to do so.

Chen purchased the house with her separate property. Midland makes no argument to suggest Chen and Wang ever validly transmuted the house from separate to community property. The house is thus Chen's separate property and not subject to foreclosure to pay Wang's debts. Fam. Code § 913(b)(1) (West 2016).

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[7] Midland's claim of a business arrangement between Wang and Chen's father is based on the printout of an unofficial and unauthenticated "Legalmall" database search. ER 222. Chen objected to the authenticity of this evidence before the district court (Dkt. 77), and the court never addressed her objection.

D. Even If the Title Presumption Controlled, Chen Showed by Clear and Convincing Evidence that She Owns Her Home as Separate Property

Even if the title presumption controlled here, Chen presented clear and convincing evidence that she owned the house as separate property. As noted, the undisputed documentary evidence shows she paid the entire purchase price of the house from her separate property. ER 229, 232, 237-38. This evidence corroborates and confirms the written agreement that Chen and Wang signed the same week they took title to the house, which states that Chen paid the full price of the house and owns "100% of the property." ER 129 (the "2005 Agreement").

The district court found the parties' 2005 Agreement not credible largely because it conflicted with the title documents. But as explained in the Opening Brief, the court misunderstood California law governing marital descriptions on title documents. Opening Br. 21-23. California law does not require parties to declare their marital status under penalty of perjury in title documents, nor does it treat inaccurate statements as improper. *Socol v. King*, 223 P.2d 627, 629 (Cal. 1950);[8] *In re Marriage of Ruelas*, 64 Cal. Rptr. 3d 600, 601-05 (Ct. App. 2007);

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[8] Midland is wrong that there *must* be an agreement between the spouses to show that ownership is other than stated in the title. Answering Br. 28 n.10. The language in *Socol* and other cases suggesting that tracing the funds is insufficient absent proof of an agreement predates the 1985 transmutation statute (or, in the case of *In re Marriage of Broderick*, 257 Cal. Rptr. 397 (Ct. App. 1989), the transactions at issue predate the transmutation statute). The suggestion that the

Cal. Law Revision Comm'n, *supra*, at 211. The wire transfer report and closing documents showing the full purchase price came from Chen's separate account—along with the contemporaneous 2005 Agreement between the parties acknowledging the house was Chen's separate property—provided clear and convincing evidence that Chen owned the home as her separate property.[9]

II. THE DISTRICT COURT ERRED IN EXCLUDING ALL EVIDENCE PRESENTED BY CHEN

Midland spills considerable ink explaining that the district court said Chen's evidence was not credible before excluding it. *See* Answering Br. 30-35. The court did indeed make those findings as to credibility, as Chen's Opening Brief readily acknowledged. Opening Br. 11, 14. Despite Midland's suggestion, Chen's argument is not a sophistic point that because the court "excluded" the evidence, the court's comments about credibility should be ignored. Rather, this Court should consider the evidence on appeal because it was improperly excluded.

The court found Chen and Ren were not credible based on their written declarations, and then excluded all of their evidence wholesale, even documents

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title presumption cannot be overcome solely by tracing the funds used to purchase the property is no longer good law. *Valli*, 324 P.3d at 280.

[9] Since she transferred a 50% ownership in the house to Ren in 2008, Chen and Ren now own the house as tenants in common. ER 131. Statements regarding Chen's sole ownership refer to the period before this 2008 transfer.

such as bank records or closing statements that Midland had never challenged as irrelevant or inauthentic. ER 4-15, 32-33.[10] The Opening Brief explained the numerous legal errors the court made in excluding Chen's evidence, and Midland does not attempt to defend some of the court's reasoning. In particular, both the magistrate and district court rejected the declarations of Chen, Ren, and Chen's father because they were "self-serving for the Chen family." ER 9-10, 25, 32. As the Opening Brief explained and Midland does not dispute, that is not a proper ground for exclusion. Opening Br. 18-19. Likewise, Midland does not dispute that the documents were all relevant. Opening Br. 19-20.

Other than an extensive credibility attack on the 2005 Agreement based on Midland's "simple common sense" assumptions regarding human behavior (Answering Br. 36-39), Midland makes three arguments relating to the exclusion of Chen's documents. All three are meritless.

First, Midland points out that the magistrate excluded Chen's initial declaration for failure to comply with a local rule. *See* Answering Br. 40. But as Chen explained, the local rule sets out a technical requirement to ensure a signature on a document is authentic, and in this case Chen was present at the hearing and could have authenticated the document in person. Opening Br. 21.

[10] These credibility findings are the reason Chen does not challenge the court's conclusion that she was married to Wen Wang—although she does not waiver from her assertion that she was never married to him.

Midland does not dispute that the exclusion of her declaration coupled with the court's refusal to allow her to provide any additional evidence (ER 180) was an abuse of discretion. Moreover, Chen resubmitted a properly signed declaration under penalty of perjury to the district court for de novo consideration (ER 113-16), so the failure to properly authenticate her signature in the earlier declaration is ultimately irrelevant.

Second, Midland suggests that the district court could have rejected Chen's evidence because she did not attach all the documents to the third-party claim letter she sent to the federal marshal in response to Midland's notice of levy. *See* Answering Br. 17. The Notice of Levy is dated April 22, 2014, purporting to levy upon her home for the debts of Wang and Weiland International. ER 244. At that point, Wang had not been named on the title to the house for more than six years—the deed vesting joint ownership in Chen and Ren was recorded February 19, 2008. ER 131. Chen promptly sent a letter to the marshal objecting to the levy because "the property is co-owned by Hongdi Ren and Me" and Wang had no interest. Dkt. 19, Ex. A at 2. That was a short and plain statement of the objection that would seem to fully explain why Midland could not levy the property based on a debt owed by Wang.

Midland now argues that the Court can affirm because Chen did not attach all the documents supporting her claim to this letter as required by California Code of Civil Procedure § 720.130(b). But exclusion of documents is discretionary

under the statute. *Id.* ("the court in its discretion may exclude"). The fact the district court did not invoke this ground for exclusion—while invoking plenty of others—is a good indication it would not be appropriate to exclude all of Chen's evidence in this context. Chen was not represented by counsel at that time, and filed a prompt objection to Midland's Notice of Levy that, on its face, disposed of Midland's claim. It would have been an abuse of discretion for the district court to rule that an unrepresented person could lose her home because she did not know about an obscure legal provision that required her to attach all documents supporting her claim to her time-sensitive first filing.

Finally, Midland repeatedly criticizes Chen for failing to include certain documents in her "designation of the record" for this appeal. Answering Br. 9 n.3; *id.* at 6, 9, 10 n.4. But of course, in this Court (unlike California state court) there is no "designation" of record—the entire district court record is properly before the Court on appeal. *Cf.* Fed. R. App. P. 30(a)(2). Chen did not include the documents in her Excerpts of Record since they were not the basis of the rulings below, and thus not necessary "to the resolution of an issue on appeal." 9th Cir. R. 30-1.4.

Midland apparently did not view the documents in question as important either, for Midland failed to provide them to the Court in a Supplemental Excerpts of Record. *See* 9th Cir. R. 30-1.7 ("If the appellee believes that the excerpts of record filed by the appellant exclude items which are required under this rule, . . .

the appellee shall, unless exempt pursuant to Circuit Rule 30-1.2, at the time of the appellee's brief is submitted, submit supplemental excerpts of record, prepared pursuant to this rule, comprised of the omitted items."). Indeed, Midland also failed to include the documents in its excerpts of record in the companion appeal No. 15-16016, even though Midland submitted nearly 300 pages of documents in that proceeding. Midland's criticism is baseless.

In sum, the court erred in excluding all Chen's evidence. In particular, Midland has never challenged the authenticity of the closing statement or bank records showing Chen paid the entire purchase price for the house from her personal bank account. ER 232, 237-38. The court gave no specific reason for excluding these documents other than the fact they were attached to declarations the court found objectionable. ER 26. The court erred in excluding those records, and, as explained above, this evidence compels a finding that Chen owns the house as separate property. *See* Section I, *supra*. Forced sale of the home where Chen lives with her children is improper, unfair, and contrary to California law.

CONCLUSION

For the foregoing reasons and those explained in the Opening Brief, Chen respectfully requests this Court to reverse the order of the district court and direct entry of judgment for Chen.

Respectfully submitted,

Date: February 1, 2016 By: s/ *Anna-Rose Mathieson*

Anna-Rose Mathieson
Ben Feuer
Audra Ibarra
California Appellate Law Group LLP

Attorneys for Appellant Weiping Chen

CERTIFICATE OF COMPLIANCE

Counsel for Appellant Weiping Chen certifies:

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). This brief contains 5,887 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Adobe Caslon Pro font.

Respectfully submitted,

Date: February 1, 2016

By: s/ *Anna-Rose Mathieson*
Anna-Rose Mathieson
Ben Feuer
Audra Ibarra
California Appellate Law Group LLP

Attorneys for Appellant Weiping Chen

CERTIFICATE OF FILING AND SERVICE

I hereby certify I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system on February 1, 2016. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system, which constitutes service pursuant to Fed. R. App. P. 25(c)(2) and Ninth Circuit Rule 25-5(g).

I further certify that some of the participants in the case are not registered CM/ECF users. The foregoing document will be served by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

Hongdi Ren
2956 W. Castle Pines Ter.
Dublin, CA 94568

Wen Wang & Weiland Int'l Inc.
541 W. 3rd Street, Apt. 20
Reno, NV 89503

Respectfully submitted,

Date: February 1, 2016

By: s/ *Anna-Rose Mathieson*
Anna-Rose Mathieson
Ben Feuer
Audra Ibarra
California Appellate Law Group LLP

Attorneys for Appellant Weiping Chen