

No. 47937-1-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

VICTOR K. CHENG,

Appellant,

and

JULIA A. CHENG,

Respondent

APPEAL FROM THE SUPERIOR COURT  
FOR KITSAP COUNTY  
THE HONORABLE SALLY F. OLSEN

BRIEF OF APPELLANT

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SMITH GOODFRIEND, P.S.

MCKINLEY IRVIN, PLLC

By: Catherine W. Smith  
WSBA No. 9542  
Valerie A. Villacin  
WSBA No. 34515

By: Jennifer J. Payseno  
WSBA No. 22153  
Jessica T. Moore  
WSBA No. 33778

1619 8<sup>th</sup> Avenue North  
Seattle, WA 98109  
(206) 624-0974

1501 4<sup>th</sup> Avenue, Suite 1750  
Seattle WA 98101  
(206) 625-9600

Attorneys for Appellant

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## I. INTRODUCTION

The community estate was comprised largely of the husband's business, valued at \$3.6 million based on its predicted future income stream. The wife was awarded her interest in the business in the form of a \$1.455 million "equalizing" judgment that the trial court acknowledged could not be paid except by monthly installments over 15 years, and imposed 6% interest. Based on the business' future income stream, the wife was also awarded spousal maintenance for 44 months – starting at \$20,000 for 8 months, \$15,000 for 24 months, and \$10,000 for 12 months (\$640,000 total). The maintenance award was improper because the wife, a Harvard MBA, had already received more than \$450,000 in maintenance by the time final orders were entered, and because it double-counted the income of the husband's business as 1) income for purposes of calculating maintenance and 2) as an asset divided in the property distribution.

The trial court also erred in failing to credit the husband for payments he made after separation toward community obligations pursuant to a pre-trial order. Because the court refused to grant the husband the credit that he was previously awarded, the husband's share of the community was artificially inflated by over \$170,000.

The trial court also erred in awarding child support above the standard calculation when the vast majority of the expenses relied on to increase support are extraordinary expenses paid in addition to the transfer payment. This error was compounded by the trial court's error in overstating the father's income and understating the mother's income. The trial court erred in 1) failing to deduct the father's mandatory pension payments from his gross income as required by RCW 26.19.071(5)(c), 2) failing to acknowledge the interest paid by the father to the mother for her share in the father's business as required by RCW 26.19.071(3)(i), (5)(h), and 3) not imputing income to the mother as voluntarily unemployed as required by RCW 26.19.071(6) when the trial court found that she is capable of working and could earn at least \$80,000, and over \$100,000 in a year or two.

This court should reverse and remand with directions to the trial court to reconsider its maintenance award, to reduce the interest on the judgment to the wife, to adjust the property award after crediting the husband for his post-separation payments on community obligations, and to recalculate child support based on the standard calculation after deducting the father's mandatory pension and business expense payments from his gross income, imputing

income to the mother, and including the mother's interest income in her gross income.

## **II. ASSIGNMENT OF ERRORS**

1. The trial court erred in finding that the wife has the need for maintenance in the amounts and duration established by the court, which was premised on its finding that the husband has monthly income of \$80,000. (Finding of Fact (FF) 2.12(2), (14), (15), CP 730, 731-32; Conclusion of Law (CL) 3.4, CP 760-761)

2. The trial court erred in concluding that it was not "double dipping" by awarding maintenance to the wife from the income of a business that was valued based on its future income, and for which the wife was already compensated through the asset division. (CL 3.4, CP 761)

3. The trial court erred in finding that "a 6% interest rate [on the equalizing judgment] resolves the needs of both parties and should be used for the amortization." (FF 2.8.6, CP 729; CP 795)

4. The trial court erred in finding that the husband's post-separation payment towards the pension was a separate debt. In the alternative, the trial court erred in finding that the entire value of the pension was community property. (FF 2.8.3, CP 728; FF 2.10, CP 729; FF 2.11, CP 729; CP 771-72, 794-95)

5. The trial court erred in finding that the husband failed to “present evidence at trial to show what portion of the 2013 taxes [the wife] could rightly be held jointly liable for” and that the wife “had no access to profits from the family business during the most profitable season of the year, the fourth quarter.” (CP 795)

6. The trial court erred in finding the father’s monthly net income was \$40,060.47. (CP 780, 796)

7. The trial court erred in finding the mother’s monthly net income was \$15,599.39. (CP 796; CP 781<sup>1</sup>)

8. The trial court erred in finding that “support should exceed the maximum level provided in the Washington State Child Support Schedule, due to the lifestyle that has been enjoyed by the children,” “the standard of living of each parent,” and that the “children have experienced a lifestyle that includes frequent meals at expensive restaurants, an organic diet that is financially beyond the scope of the average household, and expensive vacations, clothing, education, lessons and activities.” (FF 2.20, CP 759; CP 782; *see also* CL 3.4, CP 761)

<sup>1</sup> The body of the child support order states the mother’s net income is \$18,971, but the child support worksheet states the mother’s net income is \$15,599.39, which is the amount that the trial court relied on in calculating child support. The mother’s income as stated in the body of the order is also in error.

9. The trial court erred in entering its Findings of Fact attached as Appendix A. (CP 723-63)

10. The trial court erred in entering its Decree of Dissolution attached as Appendix B. (CP 764-78)

11. The trial court erred in entering its Order of Child Support attached as Appendix C. (CP 779-93)

12. The trial court erred in entering its Order on Reconsideration attached as Appendix D. (CP 794-98)

### **III. STATEMENT OF ISSUES**

1. Whether an award of spousal maintenance based on income attributable to the value of the husband's business for which the wife was already compensated in the property distribution is an impermissible "double dip"?

2. In a pretrial order, the husband was ordered to pay certain community obligations, which "shall be a credit to him at the time of distribution." Neither party challenged this order when it was entered or at trial; nor did the wife dispute at trial that the obligations paid by the husband were community debts. Did the trial court err in failing to grant the husband credit for these community debts paid from the husband's post-separation earnings?

3. Whether the trial court erred when it failed to include all the income available to the wife, including imputed income to the wife, and failed to deduct the father's mandatory pension payments and normal business expenses, as required by RCW 26.19.071, in calculating child support?

4. Did the trial court err in awarding child support above the standard calculation based on extraordinary expenses that the parents share outside the transfer payment?

#### IV. STATEMENT OF FACTS

**A. The parties were married for 16 years when they separated. They have three school-aged daughters.**

Appellant Victor Cheng and respondent Julia Sun (formerly Cheng), both age 42, were married on November 20, 1996. (V. Cheng RP 3; CP 3) The parties separated on July 31, 2013, shortly before Victor filed a petition to dissolve the parties' marriage in Kitsap County Superior Court on August 2, 2013. (CP 3-7; Finding of Fact (FF) 2.5, CP 724)

The parties have three daughters, ages 11, 7, and 5. (V. Cheng RP 5; CP 780) The oldest daughter has "learning difficulties." (J. Cheng RP 7-8; FF 2.19(43), CP 743) A final parenting plan was entered May 8, 2015. (CP 802) The children reside primarily with

Julia, and with Victor five out of fourteen overnights. (CP 803) Victor is not challenging the final parenting plan on appeal.

When the parties separated in mid-2013, a temporary order was entered requiring Victor to pay temporary monthly maintenance of \$10,000 to Julia. (CP 10; Ex. 5) Victor was also ordered to pay all other expenses, including the mortgage for the family home where he and the children were residing under a temporary parenting plan, costs for the remodel of the family home, and all of the children's expenses, including private school tuition and child care. (CP 11; Ex. 5) Although the trial court found that Julia "had no access to profits from the family business" during the fourth quarter of 2013 (CP 795), that was because Victor was charged with paying all of the community expenses from those "profits," including those related to the family home that was later awarded to Julia. (CP 11, 766)

On April 23, 2014, the trial court (Judge Jay Roof) increased Julia's temporary monthly maintenance from \$10,000 to \$25,000, while still requiring Victor to pay all of the children's expenses. (CP 16; 4/23 RP 2-3; Ex. 17) In increasing maintenance, the court specifically stated that it was not establishing a new "status quo," as the order was intended to be in effect for just a brief time, until the then-scheduled trial in July 2014. (4/23 RP 2-3) When the trial was

continued to December 2, 2014, the court allowed the increased maintenance to continue but ordered it would be “subject to offset against assets.” (7/7 RP 38; CP 14; Ex. 16)

In addition to maintenance, which the court ordered could be offset against assets as a partial pre-distribution of property to Julia (CP 14; Ex. 16), Victor was ordered to pay “unpaid retirement and federal taxes” then owed by the parties, which the court ordered “*shall* be a credit to him at the time of distribution.” (CP 16; Ex. 17) (*emphasis added*) The “retirement” is a defined benefit plan to which Victor must make mandatory contributions, or else pay a tax penalty. (V. Cheng RP 207-08; Ex. 45) In September 2014 – more than a year after the parties separated – Victor paid \$83,316 to the parties’ defined benefit retirement plan. (V. Cheng RP 208; CP 315) Victor also paid \$94,923 toward the parties’ 2013 tax debt. (CP 316; Ex. 43) By the time the decree was entered in May 2015, Victor had paid \$459,000 in maintenance to Julia, including \$74,000 that he voluntarily paid before temporary orders were entered. (V. Cheng RP 184)

**B. Both parties are well-educated.**

Victor and Julia met while they were both undergraduates at Stanford University. (V. Cheng RP 4) They began living together in

Julia's dorm in 1994. (J. Cheng RP 28)<sup>2</sup> Both graduated from Stanford in 1995. (J. Cheng RP 28; V. Cheng RP 4) Victor graduated with a Bachelor of Arts degree in economics and a Master of Arts degree in sociology. (V. Cheng RP 4) Julia graduated with an economics degree. (J. Cheng RP 38)

**1. The wife is a MBA Harvard graduate.**

After graduating from Stanford, Victor was actively recruited for employment. (V. Cheng RP 677) Victor's first choice was Bain & Company in San Francisco, which had made him an offer. (V. Cheng RP 677) However, the parties moved to New York City, where Julia had been recruited. (J. Cheng RP 32, 823; V. Cheng RP 677) After briefly working for the firm that recruited her, Julia left for a better position at First Manhattan Consulting Group. (J. Cheng 33) After a year with First Manhattan, Julia quit to take classes at NYU to improve her skill set. (J. Cheng RP 35, 38, 43-44) After nearly a year off work to take classes at NYU, Julia began working for Pepsi in March 1998 as a business analyst. (J. Cheng RP 45) Pepsi soon promoted Julia to business planner. (J. Cheng RP 50)

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<sup>2</sup> The trial court found the parties had been in a "committed intimate relationship" while cohabiting in Julia's dorm room. (FF 2.12, CP 729; J. Cheng RP 28)

While Julia was at Pepsi, the parties discussed starting a family. (J. Cheng RP 51-52) Julia had trouble getting pregnant, and she decided to leave Pepsi to pursue an MBA. (J. Cheng RP 51-52)

Julia was admitted into both the Harvard and Stanford MBA programs in 2000. (J. Cheng RP 55, 541) She chose to attend Harvard. (J. Cheng RP 55, 541) During the first year of the program, Victor continued to work in New York while visiting Julia on weekends. (J. Cheng RP 56) Victor eventually joined Julia permanently at the beginning of her second year at Harvard Business School, after finding employment in Boston. (J. Cheng RP 56; V. Cheng RP 678) Julia graduated from Harvard with an MBA in 2002. (J. Cheng RP 57)

Julia did not seek employment after earning her MBA. (J. Cheng RP 57-58) Julia testified that the parties “never discussed” whether she would actually use her MBA. (J. Cheng RP 54) Julia testified that her “number one priority” in going to Harvard Business School had been to “get pregnant.” (J. Cheng RP 902) Julia testified that the parties agreed that she would finish her degree and then become a stay at home mother. (J. Cheng RP 54, 58) Julia testified that she intended to have the MBA in her “back pocket” were she ever to pursue “future part-time work” if she “need[ed] to find something

else to do.” (J. Cheng RP 54) Julia testified it was the “Chinese Way” to earn the highest ranking degree you could get. (J. Cheng RP 55)

Victor testified that the parties agreed that once they had children, Julia would stay home during the “early years” while the children were infants and not in school. (V. Cheng RP 679) However, the plan had always been that Julia would return to work when the children went to school. (V. Cheng RP 679) Victor testified it would make no sense for the community to pay over \$100,000 for Julia to obtain her MBA (as it did) if she was never going to use her degree and work. (V. Cheng RP 679)

Shortly after Julia completed her MBA, the parties relocated to the Bay Area where Victor pursued employment in the recovering tech sector. (J. Cheng RP 59) Julia became pregnant with their oldest daughter soon thereafter. (J. Cheng RP 60)

At trial, Julia acknowledged that she would need to work after the parties’ divorce, but testified she was not interested in returning to the business sector, where she has experience and a Harvard MBA. (See J. Cheng RP 313) Instead, Julia testified that she wanted to take courses over the next five to six years to become a commercial real estate appraiser. (J. Cheng RP 279; Ex. 210 at 11-12) The starting annual salary for a real estate appraiser is between \$30,000 and

\$40,000 (J. Cheng RP 551), just above Seattle's minimum wage of \$15 per hour. According to Julia's vocational expert, Jan Reha, Julia could earn \$60,000-\$80,000 as an appraiser in four to six years. (Reha RP 22, 45-46)

Victor's vocational expert, William Skilling, testified that Julia could be employed within 90 days, earning "at or near \$86,000," based on her current experience and education. (Skilling RP 50) Skilling testified that Julia's credentials outweighed any disadvantage from having been away from the workforce for several years. (Skilling RP 22, 47) "[A]ny employer would be thrilled to have a Harvard MBA on their payroll," as it "adds value" to their company. (Skilling RP 23) A Harvard MBA carries more significance than an MBA from any other school; a Harvard MBA does not become "outdated." (Skilling RP 75, 68) As Skilling testified, "Harvard University is felt by many to be the most prestigious university in the United States. Its history and reputation is such that the Harvard MBA is the gold standard that everyone would love to have." (Skilling RP 75)

Skilling did not believe that a career as a real estate appraiser was the highest and best use of Julia's experience and education. (Skilling RP 20, 40) Skilling noted that there was no "direct

connection” between Julia’s existing skill set and that of a commercial real estate appraiser. (Skilling RP 31) Skilling testified Julia’s skills and qualifications today would enable her to earn much more than \$60,000 to \$80,000 without any additional training, and without waiting another five to six years to be trained for a lower-paying job, as proposed by Julia. (Skilling RP 31)

The trial court found that Julia was “highly educated, intelligent, talented and creative and she should be able to secure employment within a reasonable amount of time.” (FF 2.12(12), CP 731) The trial court was skeptical of Julia’s plan to become a real estate appraiser “when [as a real estate appraiser] she won’t be earning anything until 2016, and only \$60,000 to \$80,000 after six years, when she could probably obtain re-training and refresh her MBA related skills in a fraction of that time.” (FF 2.12(14), CP 731-32) The trial court found that Julia “surely could obtain such re-training in a year or two at the most[,] earning at least \$80,000, and over \$100,000 after two years – which is commensurate with her educational background and experience.” (FF 2.12(14), CP 732)

Despite the fact that Julia had already received \$459,000 in maintenance in the 22 months since separation in July 2013, the trial court awarded Julia an additional 44 months of maintenance. (CP

767) Victor was ordered to pay monthly maintenance to Julia of \$20,000 until December 2015 (8 months); \$15,000 until December 2017 (24 months); and \$10,000 until December 2018 (12 months). (CP 767)

**2. The husband started a consulting business that became profitable during the later years of the marriage.**

After graduating from Stanford, Victor worked at McKinsey & Company in New York City as a business analyst, and was later promoted to associate. (J. Cheng RP 39-41) Victor left McKinsey in 1998, believing that there were better opportunities for him. (V. Cheng RP 246) Between 1998 and 2009, Victor was employed in various positions, including at Predictive Networks in Boston, where he moved when Julia was pursuing her Harvard MBA. (V. Cheng RP 247) During that period, Victor earned between \$95,000 and \$150,000 annually. (V. Cheng RP 247-48)

Starting in 2009, Victor focused on his business Fast Forward Media (“FFM”), “a consulting and distance-learning service company” that he had founded in 2002. (V. Cheng RP 186)

FFM has two sources of income. A small portion of FFM is a “fee-for-service management consulting service” that provides executive coaching to clients whose businesses range between \$1

million to \$10 million annually. (V. Cheng RP 310) These clients are owners of fast-growing small businesses, “typically Inc.-500-type business owners.” (V. Cheng RP 187)

The larger part of FFM’s business is a “media publishing or distance-learning type company” known as “Case Interview.” (V. Cheng RP 311; Long I RP 30) FFM products and services are sold to those aspiring to be in the management consulting field. (V. Cheng RP 188, 194, 311) His clients are new graduates of MBA/Ph.D-type programs seeking employment in the management/consulting industry at one of the three “big firms:” McKinsey & Company (where Victor previously worked), Bain & Company, and Boston Consulting Group. (V. Cheng RP 187-88) FFM assists its clients with mock interviews and resumé creation. (See V. Cheng RP 199-200; Ex. 30 at 3) Because Victor had been through the case interview process after graduating from Stanford, he has expertise in this area. (V. Cheng RP 187-88)

The revenue from FFM started small, but grew towards the end of the marriage. In 2009, revenue (before expenses) was \$275,000; in 2010, \$550,000; in 2011, \$1.082 million; in 2012, \$1.398 million; and in 2013, \$1.545 million. (V. Cheng RP 192-93; Exs. 32, 33, 34, 35, 36, 37)

In 2013, FFM paid the parties \$291,000 in wages. (V. Cheng RP 252; Ex. 43) Income in excess of wages is in the form of pass-through income from FFM, which is an S corporation. (V. Cheng RP 252) In 2012, Victor's FFM income was \$353,265. (Exs. 35, 42) In 2013, Victor's FFM income was \$635,495. (Exs. 36, 37, 43)

Victor had expected FFM's 2014 revenue to be similar to the previous year. (V. Cheng RP 451) However, by the time of trial in December 2014, there had been a slow down; sales revenue for 2014 had "flattened." (V. Cheng RP 451-52) In particular, FFM's revenue from its flagship product "Look Over My Shoulder," the single largest source of sales for the distance learning business and the company overall, had declined by approximately 20%. (V. Cheng RP 452) Victor testified that because it is the most well-known and popular, this product is also the "most pirated." (V. Cheng RP 453)

Victor did not believe that FFM will continue at the same pace moving forward. (V. Cheng RP 457-59) The business risks moving forward were market saturation in a market limited to individuals seeking employment at only three firms, content piracy, and the company's dependence on Google to continue placing FFM at the top of its search for potential clients. (See V. Cheng RP 453, 457-59, 462-64; Ex. 30 at 3)

The parties offered competing valuations of FFM at trial. Victor's business valuation expert, Steven Kessler, valued the business at \$2.08 million. (Ex. 30 at 4) Julia's business valuation expert, Aenas Long, a CPA from California, valued the business at \$4.68 million. (Ex. 208 at 2) Both experts used the "capitalization of excess earnings method." (Long I RP 48; Kessler I RP 16-17; FF 2.8.2.1, CP 726) Both experts acknowledged that FFM has a relatively small tangible asset value, and that the bulk of the value was due to the business' goodwill. (Long I RP 19; Kessler I RP 36-37)

The trial court found that FFM has "significant goodwill and profits, has experienced significant growth, and will, more likely than not, continue to enjoy significant growth in the future." (FF 2.8.2, CP 726) The trial court found that Long's assumption about FFM's future income, projecting a 10% increase in income for 2014 and 2015, 5% increase in 2016, 4% increase in 2017, and 3% growth thereafter, was "overly optimistic," but "slightly more credible" than Kessler's prediction of a 10% decrease in 2014, and 3% growth thereafter. (FF 2.8.2.2, CP 727)

The trial court also found that the capitalization rate was "somewhere in between" Kessler's proposed 18% rate and Long's

15%. (FF 2.8.2.5, CP 728) The trial court recognized that the risks for FFM in the future were that Victor is the sole owner and FFM is limited in its ability to diversify. (FF 2.8.2.5, CP 728)

The trial court found FFM was worth \$3.6 million. (FF 2.8.2.1, CP 726) In making this determination, the trial court adopted Long's determination of Victor's "replacement compensation" at \$245,000 over Kessler's estimated replacement cost of \$300,000. (FF 2.8.2.3, CP 727)

**C. The trial court awarded the wife substantial maintenance and a \$1.455 "equalizing" judgment to offset the award of the business to the husband, and ordered the husband to pay child support more than double the standard calculation.**

The parties appeared before Kitsap County Superior Court Judge Sally F. Olsen for a 21-day trial, starting in December 2014. (CP 218-67) The parties disputed parenting, child support, maintenance, and property.

The trial court awarded FFM, which the trial court described as being the "bulk" of the value of the estate, to Victor, and awarded Julia the family home and a "substantial compensating payment," in the form of a \$1.455 million judgment:

<b>Asset</b>	<b>Victor</b>	<b>Julia</b>
FFM	\$3,600,000	
Family home (net value)		\$ 513,000
Line of credit	(-\$ 45,213)	
Accounts		\$ 628
401(k)s/IRAs	\$ 57,851	\$ 94,650
Defined benefit	\$ 89,665	\$ 89,665
Vehicles	\$ 2,738	\$ 1,790
Loan to Julia's mother	(-\$ 95,000)	
Sub total	\$ 3,610,041	\$ 699,733
Judgment	(-\$ 1,455,154)	\$ 1,455,154
<b>Total</b>	<b>\$2,154,887</b>	<b>\$2,154,887</b>

(CP 771-72)

In dividing the community estate “equally,” the trial court failed to credit Victor with his post-separation payments to FFM’s defined benefit plan of \$83,613 and the joint 2013 taxes of \$94,923 that had been ordered to be credited to him in the final division pursuant to a July 2014 order. (CP 16) As a result, Julia’s “equalizing” judgment was more than \$89,000 greater than it would have been had Victor been properly credited.

The trial court acknowledged that Victor had no cash from which to pay the judgment to Julia. (FF 2.8.6, CP 729) The court found that it would likely take 15 years – until he was 57 – for Victor to pay off the judgment. (FF 2.8.6, CP 729) Despite finding that the long term growth rate for FFM’s income was only 3% (FF 2.8.2.2, CP

727), it awarded the judgment to Julia at an interest rate of 6% (CP 765), resulting in an amortization schedule requiring Victor to pay monthly payments of \$12,279.42 to Julia until April 2029. (CP 773-78) In addition to the property payments awarded to Julia, the trial court awarded monthly spousal maintenance in reducing amounts, starting with \$20,000 in May 2015 and concluding with \$10,000 through December 2018. (CP 767)

The trial court also awarded child support to Julia for the parties' three daughters. Although the standard calculation was \$2,106, the trial court ordered Victor to pay monthly support of \$5,000, based on its findings that the parents' standard of living warranted it, and that the children have enjoyed a lifestyle that includes "frequent meals at expensive restaurants, an organic diet that is financially beyond the scope of the average household, and expensive vacations, clothing, education, lesson, and activities." (FF 2.20, CP 759; CP 782) In addition to his inflated transfer payment, the trial court ordered Victor to pay 72% of the children's work-related child care, educational expenses, and agreed extracurricular activities. (CP 783-84) He is also ordered to pay 100% of the children's medical insurance premiums (currently paid by FFM) and 72% of the children's uninsured medical expenses. (CP 784-85, 786)

In calculating Julia's income for purposes of child support, the trial court only considered her spousal maintenance. (*See* CP 789) The trial court did not impute any income to Julia despite finding that she could earn "at least \$80,000" as a Harvard MBA. (FF 2.12(14), CP 732) The trial court also did not include Julia's \$7,000 monthly interest income from the "equalizing" judgment in her income. (CP 789) In calculating Victor's income, the trial court did not deduct the mandatory pension payments that he is required to pay, nor the interest he must also pay to buy out Julia's interest in the business. (CP 789)

The trial court largely denied Victor's motion for reconsideration. (CP 794-97) Victor appeals. (CP 720)

## V. ARGUMENT

### A. Standard of Review.

This court reviews both maintenance and property awards for abuse of discretion. *Marriage of Mathews*, 70 Wn. App. 116, 121, 123, 853 P.2d 462, *rev. denied*, 122 Wn.2d 1021 (1993). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). A decision is manifestly unreasonable if "it is outside the range of acceptable

choices, given the facts and the applicable legal standard.” *Littlefield*, 133 Wn.2d at 47. It is based on untenable grounds if the factual findings are unsupported by the record. *Littlefield*, 133 Wn.2d at 47. It is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *Littlefield*, 133 Wn.2d at 47.

**B. The trial court erred in basing its award of spousal maintenance on income attributable to the husband’s goodwill in his business, for which the wife was already compensated in the property distribution.**

**1. The maintenance award was an improper “double dip.”**

The trial court erred in awarding the wife maintenance based on the income for the business that the husband was awarded. That income stream was the basis for the \$3.6 million business valuation found by the trial court. The wife was already “paid” her interest in the business with the \$1.455 million judgment awarded to her. To count those funds both as income for maintenance and as an asset awarded to the husband in the property division is improper “double dipping.” *See e.g. Marriage of Barnett*, 63 Wn. App. 385, 818 P.2d 1382 (1991).

In *Barnett*, the parties’ major asset was a salvage business. The trial court awarded the wife a \$100,000 lien for half of the value

of the salvage business, plus lifetime spousal maintenance. The husband appealed the maintenance award, asserting that it was based on speculation that he would earn substantial income from the business that was awarded to him. The *Barnett* court reversed because the maintenance award was an attempt to distribute the wife's share of the business as realized through future income of the business:

That distribution had, however, already been effected by the \$100,000 lien to [the wife] for one half of the value of the salvage business. In effect, the same property was distributed twice. This was error.

*Barnett*, 63 Wn. App. at 388.

The appellate court for similar reasons reversed an award of spousal maintenance, because it required the husband to pay maintenance after he retired, in *Marriage of Mathews*, 70 Wn. App. 116, 853 P.2d 462, *rev. denied*, 122 Wn.2d 1021 (1993). The *Mathews* court acknowledged that requiring the husband to pay maintenance from his retirement income would in effect distribute property to the wife that the husband was previously awarded in the dissolution, and thus it was "clear error." *Mathews*, 70 Wn. App. at 124-125.

The maintenance award here is also “clear error” because it attempts to distribute the future income stream from the husband’s business to the wife twice. The trial court had already compensated the wife for her interest in the future income stream when it awarded her a judgment for half the value of the business, after other offsets. By awarding her spousal maintenance based on that same future income stream, the trial court in effect awarded her an interest in husband’s business twice.

This case is not like *Marriage of Valente*, 179 Wn. App. 817, 320 P.3d 115 (2014), in which the appellate court affirmed the wife’s \$10,000 monthly maintenance award as not being a “double award” from the community business that had been valued based on its future income stream. The *Valente* court held that the husband’s “replacement salary” of \$400,000, from which he could pay maintenance, had already been “carved out of the income stream used for the valuation.” 179 Wn. App. at 830, ¶ 25. Thus, the wife was not compensated for the husband’s replacement salary in the asset distribution, and the maintenance payments did not duplicate the property distribution. *Valente*, 179 Wn. App. at 830, ¶ 25. In other words, the court determined that the maintenance of \$10,000 per month to the wife could be paid from the husband’s \$33,333 per

month “replacement salary” without dipping into the value of the business.

Here, however, the maintenance award cannot be paid from husband’s replacement salary. The trial court found the husband’s replacement salary was \$245,000 annually, or \$20,416 gross per month. (FF 2.8.2.3, CP 727) But the trial court awarded the wife monthly maintenance of \$20,000 for 8 months (100% of the husband’s replacement salary), \$15,000 for 24 months (75%), and \$10,000 for 12 months (50%). In doing so, the trial court clearly considered both the husband’s replacement income *and* the future income stream from the business. (See FF 2.12(2), CP 730: “Mr. Cheng makes approximately \$80,000 a month.”)

The husband must pay maintenance from both his “replacement compensation” and the income from the business that he was awarded as his separate property. In addition, the husband must also pay amortized payments of more than \$12,000 per month to the wife for her share of the business over the next 15 years from that same income stream – nearly the entire span of the parties’ marriage. The wife’s maintenance award here was indeed an improper “double dip.”

Citing *Marriage of Lukens*, 16 Wn. App. 481, 558 P.2d 279 (1976), *rev. denied*, 88 Wn.2d 1011 (1977), the trial court concluded that awarding maintenance based on the business income of FFM was not “double dipping” because “goodwill is not synonymous with future earnings.” (CP 761) In *Lukens*, the court reasoned that the goodwill of the husband’s medical practice was not premised on his future earnings because it was “measured by arriving at a present value based upon past results and not by accounting for the post-marital efforts of the professional spouse.” 16 Wn. App. at 486.

But here, the trial court acknowledged the value of the business was based on the “*projected* income” of the business. (*See* FF 2.8.2.2, CP 726-27) (*emphasis added*) The wife’s expert testified that his valuation was based in part on “estimat[ing] what the business would generate from a cash perspective into the future then [ ] discounting that back to the present using a discount rate.” (Long I RP 14-15, 24-25) The wife’s expert testified that his valuation was also premised on “forecast[ing] out the earnings from 2014 and 2019.” (Long I RP 51, 54-55) The husband’s expert testified that if the court were to look towards the business income in excess of what the expert concluded was the husband’s reasonable compensation to award spousal maintenance, it would be double dipping because that

additional income was already considered in calculating the value of the business. (Kessler I RP 90-92)

The trial court's maintenance award, based on the future income of the business awarded to the husband, was an improper double award because the wife already received her share of this income when she was awarded a judgment that represented her half interest in the business.

**2. The maintenance award of \$640,000 over the next three years to the wife, a Harvard MBA, was improper.**

Regardless whether the maintenance award was a “double dip,” in light of the property awarded to the wife and the maintenance already paid to her, the trial court's award of an additional \$640,000 in maintenance was improper. “Maintenance is not a matter of right.” *Morgan v. Morgan*, 59 Wn.2d 639, 642, 369 P.2d 516 (1962). “It is not a policy of the law to give a wife a perpetual lien upon her divorced husband's future earnings, which arise from his personal efforts.” *Morgan*, 59 Wn.2d at 642. “The purpose of spousal maintenance is to support a spouse until she is able to earn her own living or otherwise become self-supporting.” *Marriage of Luckey*, 73 Wn. App. 201, 209, 868 P.2d 189 (1994); see also RCW 26.09.090.

Here, while the husband acknowledged that some maintenance to the wife was warranted,<sup>3</sup> the amount awarded and its duration was excessive. In the first 8 months after the divorce, the wife will receive 100% of the husband's reasonable compensation. After that, she will receive 75% for the next two years, and 50% for another year. This award was made despite the fact that the trial court acknowledged that the wife could be self-supporting within a year due to her intelligence, job experience, and education. (See FF 2.12, CP 729-32) Further, in addition to her maintenance award, the wife will be receiving property payments of more than \$12,000 per month. (See CP 773-78) Notably, if the husband was not required to pay such a large maintenance obligation, he might be able to pay off the wife's judgment sooner than 15 years.

This Court should reverse the maintenance award and direct the trial court to reconsider the amount of maintenance, based on the husband's replacement compensation alone by excluding the income from the business for which the wife was already compensated. This Court should also direct the trial court to reconsider its maintenance award in light of the property already awarded to her, including the

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<sup>3</sup> The husband proposed additional monthly maintenance of \$10,000 for two years. The wife proposed additional monthly maintenance of \$25,000 for eight years. (See FF 2.12(3), CP 730)

monthly cash payments that she will receive on her equalizing judgment.

**C. The trial court erred in imposing 6% interest on the wife's judgment when it was undisputed that the husband had no funds available to pay the judgment.**

The trial court compounded its error in awarding the wife maintenance based on the husband's purported future business income by also ordering the husband to pay off the wife's share in the business from the same income with 6% interest over fifteen years. Generally, the purpose of interest is "that he who retains money which he ought to pay to another should be charged interest on it." *Crest Inc. v. Costco Wholesale Corp.*, 128 Wn. App. 760, 775, ¶ 35, 115 P.3d 349 (2005) (discussing prejudgment interest). But here, the husband is not retaining money that he should be paying to the wife.

The trial court acknowledged that the business "constitutes the bulk of the family assets and is not divisible and [because of] the relatively small amount of other property available for the wife, the husband will owe the wife a substantial compensating payment. The husband's payment to the wife cannot reasonably be accomplished in a short period. [ ] The court also finds that the amount of the compensating payment and the current ability of Mr. Cheng to make monthly payments will require an amortization period of 15 years."

(FF 2.8.6, CP 729) In other words, the trial court acknowledged that the husband was not retaining any money that could be paid to the wife to satisfy the judgment.

That the trial court awarded a \$1.455 million judgment to the wife that indisputably cannot be paid in the short term and must be paid over 15 years is illustrative of the sometimes inequitable outcomes in valuing a business based on its purported “goodwill.” Because the business has little to no tangible assets, the trial court acknowledged that the husband had no source other than the business’ future income from which to pay off the judgment. The trial court’s “property payout schedule” presumes not only that the husband will continue to earn enough income to pay off the judgment (and his spousal maintenance obligation) over the next 15 years, but that he will also have the ability to pay 6% interest on the judgment – \$755,140.49 in total. (CP 778) And unlike a maintenance award, which is modifiable, there is no relief for the husband if the trial court’s prediction of the business’ future income is wrong. *See* RCW 26.09.170.

While the trial court properly exercised its discretion to award less than the statutory rate of 12%, it should have imposed no interest at all. *See Marriage of Young*, 18 Wn. App. 462, 569 P.2d 70 (1977).

In *Young*, the appellate court affirmed the trial court's decision to impose no interest on a deferred property award. 18 Wn. App. at 466. Like the present case, the trial court made an equal division of property, awarding the husband the community business that constituted a large part of the marital estate. 18 Wn. App. at 463-464. The trial court in *Young* awarded an equalizing judgment to the wife to be paid in bi-annual payments over three years. 18 Wn. App. at 464. The judgment accrued no interest unless the husband was delinquent in his payments, in part because the trial court recognized that the husband did not have access to funds to pay off the judgment and would have to use the income from the community business to pay the award. *Young*, 18 Wn. App. 465-466. Under those circumstances, the court in *Young* held that the trial court did not abuse its discretion in not imposing interest on the judgment. 18 Wn. App. at 466.

Even if some interest was appropriate, 6% was too high and inconsistent with the trial court's finding that the husband's income would only grow at a rate of 3% in the long term. (FF 2.8.2.2, CP 727) At most, any interest on the payments owed to wife should have been 3%, the same growth rate of the husband's income from which the judgment will be paid. This Court should reverse and remand for the

trial court to reconsider the interest rate imposed on the judgment.

In no event should interest of more than 3% be awarded.

**D. The trial court erred in failing to credit certain payments made by the husband after separation.**

On July 7, 2014, the trial court ordered the husband to pay the “unpaid retirement and federal taxes currently owing,” but ordered that these payments “shall be a credit to him at the time of distribution.” (CP 16; Ex. 17) The wife did not challenge this order at the time it was entered, nor did she challenge it during trial. Nevertheless, despite the husband having paid these amounts as ordered by the court, the trial court failed to give the husband credit for the payments in the final decree.

Both of these payments were made from the husband’s earnings after separation. RCW 26.16.140 (“when spouses [ ] are living separate and apart, their respective earnings shall be the separate property of each”). The husband paid the pension debt of \$83,316 on September 8, 2014, more than a year after separation. (CP 316) In denying the credit, the trial court somehow rationalized that the pension was a “separate debt” because it was a debt of FFM, which had been awarded to the husband as his separate property. (See CP 795)

But if that were true, then the trial court should have found that the increase in the value of the pension as a result of this payment on the husband's "separate debt" was his separate property. The trial court instead found that the full value of the pension was community property, and divided it equally between the parties. (CP 316) Because the trial court found that the pension was community property, the debt paid by the husband to increase its value should have been considered a community debt and credited the husband in the asset spreadsheet with its payment. *See Marriage of Hurd*, 69 Wn. App. 38, 54-55, 848 P.2d 185, *rev. denied*, 122 Wn.2d 1020 (1993) ("the test for determining whether a debt obligation is separate or community in nature is the purpose for which the note was executed"), *rev'd on other grounds by Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009); *see also Dizard & Getty v. Damson*, 63 Wn.2d 526, 530, 387 P.2d 964 (1964) ("it is inconceivable that respondent may authorize the husband to carry on the community business, create a potential source of assets, ultimately share in these assets, and yet be immune from the claims of creditors who contribute to the accumulations, if any.").

The trial court supported its refusal to credit the husband for his post-separation pension payment based on its findings that the

“company,” not the husband, paid it, and the payment was already included in the value of the business awarded to the husband. (*See* CP 795) First, the husband and the company are one in the same – if the company pays a debt, the husband pays the debt. Second, the post-separation pension payment was not included in the value of the company because it was made in September 2014, and the business was valued as of December 31, 2013 – nine months earlier. (*See* Exs. 30, 208; CP 316)

The trial court also erred by failing to acknowledge the \$94,923 net 2013 income tax debt paid by the husband after separation for which he was entitled to a credit. (CP 16, 316, 795; Ex. 17) The trial court reasoned that the parties separated on July 31, 2013 and the husband “failed to present evidence at trial to show what portion of the 2013 taxes [the wife] could rightly be held jointly liable for.” (CP 795) But the wife never challenged the community’s liability for the 2013 taxes in either the hearing before the trial court in July 2014 when husband was ordered to pay the taxes and be given credit if paid, or at trial. Further, the wife signed the 2013 tax return, which acknowledged the income as joint. (*See* Ex. 43)

In rejecting the credit for the 2013 income taxes paid by the husband, the trial court also reasoned that the wife had not had any

benefit from the 2013 fourth quarter profits since the parties had by then separated. But it was undisputed that during that time, the husband paid all of the expenses for the family, including the mortgage and approximately \$400,000 in remodel costs for the family home that was awarded to the wife, in addition to maintenance to the wife. Further, both parties' experts valued the husband's business as of December 31, 2013, and the wife has been equally compensated for that value through the asset division. (Exs. 30, 208)

The trial court should have granted the husband a credit for the payment on the 2013 taxes and the pension debt. Had the trial court properly credited the husband for this payment and the pension debt, the wife's judgment lien would be reduced by \$89,119.50, to \$1,366,034.50.

**E. The trial court erred in establishing child support because it failed to include all of the income available to the wife, and failed to deduct the father's mandatory payments.**

**1. The trial court must impute income to a voluntarily unemployed parent.**

The trial court erred in failing to impute any income to the mother before calculating child support. RCW 26.19.071(6) requires the trial court to impute income to a parent who is voluntarily

unemployed or underemployed. *Marriage of Didier*, 134 Wn. App. 490, 496, ¶ 9, 140 P.3d 607 (2006), *rev. denied*, 160 Wn.2d 1012 (2007). To determine whether a parent is voluntarily unemployed, the court looks at “that parent’s work history, education, health, and age, or any other relevant factors.” RCW 26.19.071 (6).

Here, the mother, a Harvard MBA, was voluntarily unemployed at the time of trial. Despite the parties being separated for more than 18 months by the time of trial, she made little effort to find employment during the separation and stopped seeking employment completely in September 2014, three months before trial. (See FF 2.12(9), CP 731) Regardless of the mother’s earlier purported “attempts to obtain employment,” without a “reasonable explanation about why she failed to hold a job” she cannot avoid having income imputed. See *Goodell v. Goodell*, 130 Wn. App. 381, 391, ¶ 18, 122 P.3d 929 (2005).

The trial court acknowledged that the mother has “job skills” and is “highly educated, intelligent, talented and creative.” (FF 2.12(11), (12), CP 730) The children are school-aged, and the trial court found that with minimal retraining the mother could be earning between \$80,000 and over \$100,000 within one or two years. (FF 2.12(14), CP 732) The fact that the mother has been a stay

at home mother is not a basis to not impute income. *See Marriage of Pollard*, 99 Wn. App. 48, 54, 991 P.2d 1201 (2000) (mother's decision to be a homemaker, while "laudable cannot adversely affect her obligation" to provide support for her children).

The trial court failed to give any reason for its decision to not impute income to the mother – nor could it have any defensible reason. The only bases the statute provides to allow a trial court to not impute income is if a parent is "unemployable" or is "unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts." RCW 26.19.071(6). Neither of these circumstances is present here. At a minimum, the trial court should have imputed monthly income of \$6,666 to the mother, which is the "at least \$80,000" that the trial court found the mother could earn annually.

**2. The trial court must consider the interest paid to the wife on her judgment.**

The trial court further erred in failing to include the interest income that the mother earns on her property award in calculating child support. *Marriage of Scanlon & Witrak*, 109 Wn. App. 167, 175, 34 P.3d 877 (2001) (reversible error for the trial court to fail to include all of the mother's sources of income), *rev. denied*, 147 Wn.2d 1026 (2002). "All income and resources of each parent's

household shall be disclosed and considered by the court when the court determines the child support obligation of each parent.” RCW 26.19.071(1) (*emphasis added*). Among the income that the trial court must include in calculating a parent’s gross monthly income is interest income. RCW 26.19.071(3)(i).

Here, in addition to the monthly property payments awarded to the mother (which is not counted as income), the mother was awarded 6% interest on the judgment that the father is required to pay her monthly. The interest income that the mother will receive is not *de minimis*. In the first two years, the mother will receive an average monthly interest payment of over \$7,000. (*See CP 773*) The trial court should have included that income in the mother’s gross income before calculating child support.

In including this interest in the mother’s income, the trial court consequently should have deducted the interest payments from the father’s income under RCW 26.19.071(5)(h). The father must make these interest payments to the wife in order to buy out her share in the business that he was awarded, which is necessary to maintain his source of income. *Marriage of Mull*, 61 Wn. App. 715, 722, 812 P.2d 125 (1991) (“when a parent is required to make capital contributions in order to maintain his or her source of income and

when such contributions are not made to evade greater support obligations, those contributions qualify as ‘normal business expenses’ that should be deducted from the parent’s gross income under RCW 26.19.071(5)(h)).

Had the trial court properly included the interest income to the mother and properly imputed income to her, the trial court would have found she had an additional \$13,666 available in monthly income to contribute to the support of the children. And had the trial court properly deducted the father’s interest payments to the mother for her interest in the business, the trial court would have found he had \$7,000 less in monthly income available to him.

**3. The trial court must deduct mandatory pension payments from the father’s gross income.**

The trial court erred not only in calculating the mother’s gross income, but in calculating the father’s net income as well. RCW 26.19.071(5) requires the trial court to deduct not only “normal business expenses,” but “mandatory pension plan payments” from the parent’s gross income before calculating child support. RCW 26.19.071(5)(c); *Mull*, 61 Wn. App. at 720-21 (trial court properly deducted the father’s mandatory pension plan payments from his income in calculating child support). It was undisputed that the

father participates in a pension plan through FFM. As a result, he must make a minimum contribution each year that is “a mandatory contribution as specified under the regulations of the Internal Revenue Service Code Section 412.” (Ex. 45) Based on the 2013 earnings, the father was required to pay a mandatory pension payment of \$83,316, or \$6,943 per month. (Ex. 45) The trial court should have at a minimum deducted this mandatory payment from the father’s gross income before calculating his child support obligation.

Had the trial court properly calculated the parties’ incomes, it would have determined that the father’s proportionate share of the children’s support was closer to 47%, not the 72% found by the trial court. The standard calculation for father’s obligation towards the children’s support would have been closer to \$1,374, not \$2,106 – less than a third of the transfer payment ordered. Because the trial court failed to properly calculate the parties’ net incomes under RCW 26.19.071, this Court should reverse and remand with directions to the trial court to recalculate child support.

**F. The trial court erred in awarding child support above the standard calculation when the children's extraordinary expenses will be paid in addition to his transfer payment.**

The trial court compounded its error in establishing the parents' incomes and calculating their proportionate share of support by also ordering the father to make a transfer payment that exceeds the standard calculation established by the child support schedule. (CP 781-82) In doing so, the court placed a disproportionate burden to support the children on the father.

The basic child support obligation for *both* parents is \$2,925. (CP 789); RCW 26.19.011; RCW 26.19.020. By ordering the father to make a transfer payment of \$5,000, the trial court placed the entire burden of supporting the children on the father, in addition to requiring the father to pay an inflated proportion of the children's extraordinary expenses – which in turn were the same expenses relied upon by the court to increase the father's transfer payment.

While the trial court has discretion to award child support that exceeds the standard calculation, it can only do so “upon written findings of fact.” RCW 26.19.020. “Although cursory findings of fact and the trial record might appear to justify awarding a child support amount that exceeds the economic table, only the entry of written findings of fact demonstrate that the trial court *properly exercised*

*its discretion in making the award.” McCausland v. McCausland*, 159 Wn.2d 607, 620, ¶ 27, 152 P.3d 1013 (2007) (*emphasis in original*). Here, the trial court supported its decision by relying on the mother’s testimony regarding private school, special needs expenses for the oldest daughter, education, lessons, and activities. (FF 2.20, CP 759) But the father is already ordered to pay a (dis)proportionate share of these expenses, over and above his transfer payment. (CP 783-84, 786-87: the father shall pay his proportionate share of work-related child care, educational expenses, including private school tuition, agreed extracurricular activities, and uninsured medical expenses, including counseling, vision, dental, and orthodontia). Therefore, these expenses are not a basis to increase the father’s transfer payment above the standard calculation.

The trial court also relied on the mother’s testimony regarding expenses for the children’s clothing, food, and vacation. (CP 759) But even the mother’s projection for those (inflated) expenses total

little more than \$4,000 per month. (Ex. 402, 403)<sup>4</sup> The “duty of support rests equally upon both parents.” *Hughes v. Hughes*, 11 Wn. App. 454, 458, 524 P.2d 472 (1974). The transfer payment of \$5,000 exceeds the expenses that the trial court found warranted increased support. The trial court’s findings do not support an award that makes the father more than 100% responsible for the children’s support.

Finally, the trial court’s findings that increased support is necessary because of the “lifestyle that has been enjoyed by the children during the marriage”<sup>5</sup> and the “standard of living of each parent” (FF 2.20, CP 759; CP 782) are cursory and do not “demonstrate that the trial court *properly exercised its discretion* in making the award.” *McCausland*, 159 Wn.2d at 620, ¶ 27 (*emphasis*

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<sup>4</sup> Of that amount, the mother claimed \$1,643 per month or nearly \$20,000 annually for the children’s vacations. (Ex. 403) The mother admitted that she had no basis to prove that this is how much the parties historically paid for vacations because the father typically paid those bills. (J. Cheng RP 567-68) There is no evidence that the family took “expensive vacations,” and the father testified that vacations for the whole family historically averaged between \$3,500 and \$4,000 annually. (V. Cheng RP 715) The vacations described by both parties were all within the continental United States, and were usually to visit family. (See J. Cheng RP 567-68; V. Cheng RP 715)

<sup>5</sup> The mother’s projection of future expenses for the children’s “lifestyle” (Ex. 402, 403) was not reflective of their current expenses, as the mother testified that several expenses listed in her projection were not in fact being incurred. (See J. Cheng RP 267-68)

*in original*). Findings supporting an award above the standard calculation “must explain why the amount of support ordered is both necessary and reasonable.” *Marriage of Krieger and Walker*, 147 Wn. App. 952, 960, ¶ 14, 199 P.3d 450 (2008) (*citations omitted*).

Findings similar to those made here to support an award of child support above the economic table were rejected in *Marriage of Daubert and Johnson*, 124 Wn. App. 483, 99 P.3d 401 (2004). In *Daubert/Johnson* the trial court found that additional support was necessary for the “children to have a standard of living commensurate with their father.” 124 Wn. App. at 497. The appellate court rejected this finding as insufficient to support an award of child support above the standard calculation, holding that “this is not the test. The mere ability of either or both of the parents to pay more, whether based on consideration of income, resources or standard of living, is not enough to justify ordering more support.” *Daubert/Johnson*, 124 Wn. App. at 498.

The trial court’s findings do not support an award of child support above the standard calculation. This Court should reverse and remand to establish the transfer payment based on the child support schedule and the parties’ incomes, calculated as required by RCW 26.19.071.

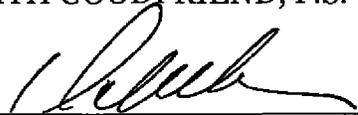
**VI. CONCLUSION**

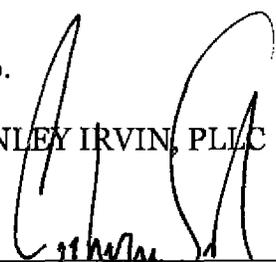
This Court should reverse and remand with directions to the trial court to reconsider its maintenance award, to reduce the interest rate on the judgment to the wife, to adjust the property award after crediting the husband for his post-separation payments on community obligations, and to recalculate child support based on the standard calculation after deducting the father's mandatory pension and business expense payments from his gross income, imputing income to the mother, and including the mother's interest income in her gross income.

Dated this 22<sup>nd</sup> day of January, 2016.

SMITH GOODFRIEND, P.S.

MCKINLEY IRVIN, PLLC

By: 

By: 

Catherine W. Smith  
WSBA No. 9542  
Valerie A. Villacin  
WSBA No. 34515

Jennifer J. Payseno  
WSBA No. 22153  
Jessica T. Moore  
WSBA No. 33778

Attorneys for Appellant

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 22, 2016, I arranged for service of the foregoing Opening Brief of Appellant to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals – Division II 950 Broadway, Suite 300 Tacoma, WA 98402	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
Jennifer J. Payseno Jessica Moore McKinley Irvin, PLLC 1501 4th Avenue, Suite 1750 Seattle WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Mark Yelish Crawford McGilliard Peterson Yelish 623 Dwight Street Port Orchard WA 98366-4693	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Doug P. Becker Ivy Fioretti Wechsler Becker LLP 701 5th Ave Ste 4550 Seattle WA 98104-7088	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Kenneth W. Masters Masters Law Group PLLC 241 Madison Ave N Bainbridge Island WA 98110-1811	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

**DATED** at Seattle, Washington this 22<sup>nd</sup> day of January, 2016.

  
\_\_\_\_\_  
Jenna L. Sanders

RECEIVED AND FILED  
IN OPEN COURT

MAY 08 2015

DAVID W. PETERSON  
KITSAP COUNTY CLERK

The Honorable Sally Olsen

WSSR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KITSAP

In re the Marriage of:

VICTOR K. CHENG,

No. 13-3-00959-1

Petitioner,

Findings of Fact and  
Conclusions of Law

and

JULIA A. CHENG,

(FNFL)

Respondent

I. Basis for Findings

The findings are based on trial before the undersigned court between December 2, 2014 and January 26, 2015, over the course of approximately 17 days. Petitioner was represented by Jennifer Paysano and Respondent was represented by Mark Yelton, Douglas Becker and Ivy Floretta. The following people attended and testified, in addition to the parties:

Witnesses called by the Petitioner:

- Martha Wakenshaw
- Bruce Olson, Ph.D.
- Steven Kessler
- William Skilling
- Joanie Klorer
- Barbara Von Reis
- Mary Tamborski
- Mary Knighton

Witnesses called by Respondent:

HO

1 Richard Adler, M.D.  
 Aeneas Long  
 2 Janice Reha  
 Brock Eide, M.D.  
 3 Denise Leiby  
 Jenne Louie  
 4 Heather Elliott  
 Katie Johnson  
 5 Anna Katherine Curfman  
 Lizbeth Doving  
 6 Annabel Channell-Johnson

**II. Findings of Fact**

7 Upon the basis of the court records, the court  *Finds*:

8 **2.1 Residency of Petitioner**

9 The Petitioner is a resident of the State of Washington.

10 **2.2 Notice to the Respondent**

11 The respondent appeared, responded or joined in the petition.

12 **2.3 Basis of Personal Jurisdiction Over the Respondent**

13 The facts below establish personal jurisdiction over the respondent:

14 The Respondent is presently residing in Washington.

15 **2.4 Date and Place of Marriage**

16 The parties were married on November 20, 1996 at New York, New York.

17 **2.5 Status of the Parties**

18 Petitioner and respondent separated on July 31, 2013.

19 **2.6 Status of Marriage**

20 The marriage is irretrievably broken and at least 90 days have elapsed since the date the  
 21 petition was filed and since the date the summons was served or the respondent joined.

22 **2.7 Separation Contract or Prenuptial Agreement**

23 There is no written separation contract or prenuptial agreement.

## 2.8 Community Property

The parties have real or personal community property as set forth in Exhibit A of the decree, which is incorporated by reference as part of these findings.

### 2.8.1 The Family Residence

The community home should be awarded to the wife. The husband requested it be sold and the wife requested it be awarded to her to reside in with the children. The court finds it will benefit the children to remain in the family home and the wife can afford it. The award of the home to the wife is also financially expedient, as a) there will be no loss of equity due to costs of sale, estimated by the husband to be \$147,500; b) the home equity awarded to the wife will offset a portion of the funds she is owed by the husband and reduce the size of the marital lien; and c) the parties selected and purchased the home in 2012 for its excellent location on the water and spent approximately \$400,000 on a major remodeling project, which the wife spent considerable time and effort managing for nearly a year. The result is a somewhat over-improved home that is built to the family's own specifications. The home is well suited to the needs of the wife and children. It makes practical sense for Ms. Cheng and the children to enjoy the home rather than sell it for less than the funds, time and effort that went into it. The fact that the family has had to move 11 times in 13 years further supports the benefit of keeping the children in a home they have become accustomed to for the past year and a half.

### 2.8.2 The Family Business, Fast Forward Media

The family struggled financially while Mr. Cheng attempted various business ventures. Significant stress was caused when Mr. Cheng quit his job on more than one occasion to pursue entrepreneurship. The community invested in his career, attending seminars and engaging in other self-improvement activities, even borrowing against their home in California to the point they couldn't pay the mortgage and had to sell it shortly after their second child was born. This community investment paid off and Mr. Cheng is now a recognized expert in his field. He has created a niche market online, selling goods and services related to preparing people to apply for jobs at the top business consulting firms. In recent years Fast Forward Media (FFM) has grown rapidly to yield an annual income of nearly \$1,000,000 in 2013, the last year for which documentation was provided. Mr. Cheng did not provide documentation for 2014; however, at trial he acknowledged his deposition testimony that he expected 2014 profits to be about the same as 2013. No evidence of a downturn or a plateau of income was introduced.

An optimistic outlook for the company was evidenced in letters from Mr. Cheng prior to separation. Mr. Cheng wrote to Ms. Cheng in May 2012 that his business advisors told him not to consider selling the business because it was an "extremely unique and valuable asset." (Exhibit 404). He wrote of his contacts in the industry, "it's just a natural extrapolation that in 8 years I'll have half the [MBB] partners in my orbit so to speak." He also wrote that building his audience and introducing new products in coming years, and described his online audience as "infinitely more valuable" than a New York Times

1 bestselling book, because he will draw from his Internet pool to sell high end products  
2 and services in the future. He described the risk of changes to the Google ranking  
algorithm as "any future google problems would be a problem, but it would only be highly  
irritating but not lethal."

3 Mr. Cheng wrote to Ms. Cheng in March 2013, "I'm at the inflection point in my career  
4 and feel it will break out even more than it already has in the next 3 years." (Exhibit 335)  
He described his high-level networking, pitching his new ideas like "Cheng Academy" and  
5 other spinoffs to top executives of Intuit, Amazon, Virgin America, etc.

6 In April 2013, Mr. Cheng described a new entrepreneurial opportunity he was pursuing,  
"a new mastermind group (\$18,000/year/person forming with Rob)... Sales are still ahead  
7 of last year both YTD and current month vs same month last year." (Exhibit 220B, Bates  
p.17, 600).

8 The court finds from the evidence that the company has significant goodwill and profits,  
9 has experienced significant growth and will, more likely than not, continue to enjoy  
significant growth in the near future.

#### 10 **2.8.2.1 Valuation of the Company**

11 The Court finds that the value of Fast Forward Media Inc. (FFM) is \$3,600,000.

12 The parties' business valuation experts, Steven Kessler for Mr. Cheng and Aeneas  
13 Long for Ms. Cheng, both acknowledged that their methodologies were essentially  
the same (the capitalization of excess earnings method), but their conclusions  
14 differed mainly because four key assumptions differed: projected income;  
replacement compensation for Mr. Cheng; tax rate; and capitalization rate.

15 Both experts used "fair value," as opposed to fair market value, in their valuations.  
16 Mr. Long's testimony addressed the *Fleege* factors (*Marriage of Fleege*, 91 Wn.2d  
324, 588 P.2d 1136 (1979)). Mr. Long testified as to Mr. Cheng's reputation in the  
17 business community in which he worked; he found that Mr. Cheng had a very high  
reputation in this industry and was a "niche celebrity." Mr. Cheng did not dispute that  
18 assessment. Mr. Cheng is 41 years of age, in good health, has had excellent  
professional success with FFM being one of the top two companies in this market.  
19 Mr. Long testified as to FFM's income producing ability and the evidence that it was  
continuing to increase.

20 The court finds that there is goodwill in FFM.

#### 21 **2.8.2.2 Projected Income**

22 The tax returns showing significant revenue increases in the past few years, with no  
23 downturns, create an inference of increasing income in the near future.

1 The husband's financial expert, Steven Kessler, projected negative income growth  
2 for 2014 by averaging 2011-2013 income. This assumption failed to take into  
3 account the unbroken trend of increasing income and treated it the same as a  
4 business whose income had been declining during those years. Per Mr. Kessler's  
5 report, FFM's revenues increased 97% in 2011, 29% in 2012 and 10% in 2013  
(Exhibit 30, report exhibit XII). However, by averaging three years, Mr. Kessler's  
projected income for 2014 was 10% less than 2013, with 3% growth thereafter. Mr.  
Kessler's approach is inconsistent with valuing a rapidly growing business and is not  
supported by the evidence about FFM.

6 The wife's financial expert, Aeneas Long, used an assumption about future income  
7 that is consistent with the historical growth of the company and the evidence. He  
8 projected a 10% increase in income for 2014, a 10% increase for 2015, a 5%  
increase in 2016, a 4% increase in 2017, and 3% growth thereafter. (Exhibit 208,  
report exhibit 2.2).

9 However, Mr. Cheng testified that revenues for 2014 were almost the same as  
10 2013, and therefore is not evidence that it increased. His first quarter estimated  
11 income was \$231,366 (Exhibit 44) X 4 = \$925,464, approximate total for 2014,  
12 compared to \$927,162 adjusted gross income in 2013 (Exhibit 43). The court finds  
13 Mr. Long's assumptions regarding future revenue overly optimistic, but slightly more  
14 credible than Mr. Kessler's predictions.

#### 12 **2.8.2.3 Replacement Compensation**

13 Mr. Kessler testified Mr. Cheng's position was unique and set Mr. Cheng's  
14 replacement compensation at \$300,000 per year, based solely on his professional  
judgment.

15 Mr. Long set replacement compensation at \$245,000, based on comparisons of like  
16 occupations. (Exhibit 208, report exhibits 8.1 and 8.2).

17 The court finds Mr. Long's assumption regarding replacement compensation more  
18 credible.

#### 18 **2.8.2.4 Tax Calculation**

19 Mr. Kessler used a 30% tax rate based solely on his professional judgment.

20 Mr. Long used the "Kessler" [no relation to the witness] methodology from *Delaware*  
21 *Open MRI Radiologists, P.A. v. Kessler*, 898 A.2d 290, 327 (2006), an industry-  
recognized and IRS-recognized standard methodology.

22 The court finds Mr. Long's assumption regarding taxes more credible.

### 2.8.2.5 Capitalization Rate

Mr. Kessler used a "buildup" method (Exhibit 30, report exhibit X) to arrive at a capitalization rate that included both an 8% company risk premium and an additional risk premium of 5% for intangible value. The court found portions of both experts' opinions credible regarding the potential risks to FFM. The court found Mr. Kessler's concerns credible that FFM is a small company and can't diversify like billion dollar companies; that FFM is not a public company and that Mr. Cheng is the sole owner of the business; and that most companies experience some ups and downs in the market over time and do not continually grow in income.

Mr. Kessler produced a capitalization of earnings rate of 18% (Exhibit 30, report exhibit X), which he adjusted upward to 21.8% for the excess earnings calculation (Exhibit 30, report exhibits VII and XI).

Mr. Long used the capital asset pricing model (CAPM) method (Exhibit 208, Tables 1 and 2) and a three percent growth rate in perpetuity using the Gordon Growth Model that resulted in a 15% capitalization rate. Mr. Long credibly identified the CAPM method as an industry standard, and utilized risk premiums from a recognized industry source, the 2013 Ibbotson Risk Premium over Time Report.

The court finds a capitalization rate somewhere in between Mr. Long's and Mr. Kessler's rates to be more accurate.

### 2.8.2.6 Other valuation factors

Mr. Kessler and Mr. Long testified about other valuation methods that they looked at but both relied upon the capitalization of excess earnings methodology. Mr. Kessler testified that, as a "sanity check," a company such as FFM must have sufficient revenue to pay off its entire value within a 5-year period. Mr. Long testified that there is no valuation method or rule that requires a 5-year payback time. Mr. Long performed a comparison valuation using publicly traded companies with similar operations to assess the reasonableness of the excess earnings results, but did not rely on this method to estimate the value of FFM. Mr. Long said that a 15 year payback period is the standard practice.

### 2.8.3 Defined benefit pension plan

The community owns a defined-benefit pension plan through Fast Forward Media that was not valued. It should be awarded equally to each party using a Qualified Domestic Relations Order.

### 2.8.4 Family Trust

The husband maintains life insurance in the amount of \$10,000,000 under three policies held in trust. The husband should maintain the insurance policies and trust to insure the wife's marital lien and provide for the children.

**2.8.5 Overall ratio of property division:**

Given the extent of the marital estate, the lack of separate property, and the award of maintenance, this Court finds that the marital estate should be divided 50/50.

**2.8.6 Property payout schedule**

Ms. Cheng is awarded 50% of the value of FFM, or \$1,800,000. This amount is partially offset by Ms. Cheng's receiving the equity in the house of \$513,000. The Asset-Debt spreadsheet, attached to the Decree as Exhibit 1, shows the global property division. The resulting equalizing payment owed by Mr. Cheng to Ms. Cheng is \$1,455,154, to be paid at 6% interest over 15 years, as illustrated in the amortization schedule attached as Exhibit 2 to the Decree.

Due to the fact that Fast Forward Media constitutes the bulk of the family assets and is not divisible and the relatively small amount of other property available for the wife, the husband will owe the wife a substantial compensating payment. The husband's payment to the wife cannot reasonably be accomplished in a short period. The wife has requested 6% interest on the delayed payments. The court finds a 6% interest rate resolves the needs of both parties and should be used for the amortization. The court also finds that the amount of the compensating payment and the current ability of Mr. Cheng to make monthly payments will require an amortization period of 15 years. The amortization schedule for the compensating payment is attached hereto and incorporated herein. If the husband sells his primary business or defaults in payment by 30 days or more, the unpaid balance should be accelerated and interest on delinquent payments should be at the statutory judgment rate.

**2.9 Separate Property**

The parties have separate property which should be awarded as set forth in Exhibit 1 of the decree, which is incorporated by reference as part of these findings.

**2.10 Community Liabilities**

The parties have community liabilities which should be assigned as set forth in Exhibit 1 of the decree, which is incorporated by reference as part of these findings.

**2.11 Separate Liabilities**

The parties have separate liabilities which should be assigned as set forth in Exhibit 1 of the decree, which is incorporated by reference as part of these findings.

**2.12 Maintenance**

(1) The parties were married for 16 years prior to separation and cohabited together in a committed, intimate relationship for two years before marriage, beginning in September

1 1994 when they were in college at Stanford. They shared expenses even though they  
2 kept separate bank accounts. Mr. and Ms. Cheng are both 41 years old and are in good  
3 physical health. Although during the first year and a half of the divorce Ms. Cheng  
4 suffered from extreme depression and anxiety, today her mental and emotional health  
5 has greatly improved.

6 (2) The Chengs' standard of living has vastly improved since 2010, when Mr. Cheng's  
7 business financially began taking off. In 2013, the Chengs earned approximately one  
8 million dollars and Mr. Cheng makes approximately \$80,000 a month gross, according to  
9 the most recent records available. Mr. Cheng has the ability to pay maintenance, and  
10 especially since his monthly living expenses will be significantly less after moving out of  
11 the family home. They have enjoyed an upper class lifestyle on Bainbridge Island,  
12 Washington, where they purchased and remodeled a million dollar waterfront home. All  
13 three daughters attend private schools, have attended numerous after school and  
14 summer camps, extracurricular activities, and the family has gone on expensive  
15 vacations.

16 (3) Ms. Cheng is currently unemployed and her only income is from maintenance and  
17 child support payments. Ms. Cheng is requesting \$25,000 for the next eight years while  
18 Mr. Cheng is offering to pay \$10,000 for the next two years through December 2016.

19 (4) Both parties received undergraduate degrees from Stanford University in 1996, and  
20 Mr. Cheng also obtained an MBA there. Ms. Cheng took additional courses at New York  
21 University, and received her MBA with a general management emphasis in 2002 from  
22 Harvard University, another Ivy League school.

23 (5) Ms. Cheng was engaged in continuous employment, when not in school, from 1996-  
24 2003. Her last job was with Pepsi Cola Company as a business planner and finance  
manager in 2000, earning \$70,000 a year, which she quit to attend Harvard.

(6) Ms. Cheng stated that she wanted to obtain an MBA with a general management  
degree because it would allow her to "... be a more well-rounded job candidate."  
However, during trial, she testified that she got her MBA to "finish off" her education  
because this was what was expected. In her culture, getting a bachelors degree was  
equivalent to getting a high school diploma.

(7) Mr. Cheng's vocational expert, William Skilling, opined that Ms. Cheng could become  
gainfully employed within 90 days and earn approximately \$115,000 based on her  
credentials. Ms. Cheng's expert, Janice Reha, however, testified that Ms. Cheng's skills  
are outdated and she needs additional training and education to re-enter the workforce.

(8) Ms. Cheng wants to become a Commercial Real Estate Appraiser and stated that it  
will take her approximately four to five years to become certified and able to earn  
between \$60,000 and \$80,000 a year. Ms. Cheng has already started taking courses and  
testified that in 2016 to 2017, she can earn \$30,000 to \$40,000 a year as an appraiser

1 trainee; in 2018 to 2020 she can earn an additional \$8,000 to \$10,000 a year; and after  
2 she becomes a General Appraiser in 2020, she will earn between \$60,000 and \$80,000 a  
year.

3 (9) Ms. Cheng states that her job skills are outdated and she has not kept up with  
4 computer, software and technology changes in the business and finance world and is at a  
5 severe disadvantage competing with younger, recent MBA graduates. She also testified  
6 that she wants to work as an appraiser from home so she can take care of her three  
7 daughters, especially Alex, who has special needs. According to her and Ms. Reha, since  
June 2014, Ms. Cheng did apply online to 52 jobs, sent 102 emails and contacted eleven  
former colleagues regarding jobs with no success. However, she admitted that she has  
not continued looking for work since September 2014 in order to prepare for trial.

8 (10) In Mr. Skillings' report, he identified 22 different jobs that he believed Ms. Cheng was  
9 qualified to do (in fact, a review of those jobs in the attachments to his report all show that  
10 but for two jobs—for financial analysts and marketing analysts— all of the jobs he cited  
11 only required a bachelors degree, and several did not even require a college degree).  
These jobs had an average median salary of \$86,362 and an average of %75 income of  
\$115,940. It was Mr. Skillings' opinion that if she conducted a "diligent and motivated job  
search," that she would be able to secure employment within 90 days.

12 (11) Although Ms. Cheng did not work during the marriage, she has job skills. She told  
13 Mr. Skillings that she is fluent in Microsoft Excel and Word, and can use the Adobe  
14 Photoshop Elements program. Ms. Cheng has skills in analyzing budgets, cost  
accounting, unit costing and the analysis of fixed costs. She feels her talents also include  
being creative and analytical. She is fluent in Mandarin Chinese as well, and assisted Mr.  
Cheng in his business by editing and giving him advice.

15 (12) The court finds Ms. Cheng to be highly educated, intelligent, talented and creative,  
16 and she should be able to secure employment within a reasonable amount of time. The  
17 court is also mindful of the limitations of her being a stay at home mother; specifically her  
18 lack of up to date internet and social media marketing skills, lack of local contacts and a  
network; caring for three young children, one with special needs, and loss of earnings  
due to career interruption.

19 (13) Mr. Cheng also recognized the sacrifices that Ms. Cheng made during their marriage  
20 to raise their family and to support his business ventures and personal development. In  
21 an email to her dated March 2013, he thanked her for, "being the one who stayed home  
with the kids and gave up your career...", "...thank you for the sacrifice and being my  
partner in all this." At trial, he also acknowledged that Ms. Cheng will never be in the  
same financial position as he will be in.

22 (14) Ms. Cheng is entitled to and needs maintenance. The issue for the court is whether  
23 the court should award her maintenance for 8 years pursuant to her request to allow her  
24 to get the Commercial Real Estate Appraiser certificate, when she won't be earning

1 anything until 2016, and only \$60,000 to \$80,000 after six years, when she could  
 2 probably obtain re-training and refresh her MBA related skills in a fraction of that time.  
 3 There was no testimony at trial about how long it would take for her to get the necessary  
 4 software, social media and current business administration skills in order to refresh her  
 5 out of date knowledge and skills. It seems to this court that she surely could obtain such  
 6 re-training in a year or two at the most. Thus, she could obtain one of the jobs listed in  
 7 Mr. Skillings report earning at least \$80,000, and over \$100,000 after two years—which is  
 8 commensurate with her educational background and experience.

9 (15) Based on the foregoing, the court finds that an award of maintenance for the next  
 10 four years in the following amounts is just and equitable:

11 \$20,000/month until December 2015 – beginning May 1, 2015

12 \$15,000/month until December 2016

13 \$15,000/month until December 2017

14 \$10,000/month until December 2018

### 15 **2.13 Continuing Restraining Order**

16 Does not apply.

### 17 **2.14 Protection Order**

18 Does not apply.

### 19 **2.15 Fees and Costs**

20 There is no award of fees or costs.

### 21 **2.16 Pregnancy**

22 The wife is not pregnant.

### 23 **2.17 Dependent Children**

24 The children listed below are dependent upon either or both spouses:

<u>Name of Child</u>	<u>Age of Child</u>	<u>Mother's Name</u>	<u>Father's Name</u>
Alexandra Cheng	11	Julia A. Cheng	Victor K. Cheng
Charlotte Cheng	7	Julia A. Cheng	Victor K. Cheng
Daniella Cheng	5	Julia A. Cheng	Victor K. Cheng

1  
2 **2.18 Jurisdiction Over the Children**

3 This Court has jurisdiction over the children for the reasons set forth below.

4 This state is the home state of the children because the children lived in Washington with  
5 a parent or a person acting as a parent for at least six consecutive months immediately  
6 preceding the commencement of this proceeding.

7 **2.19 Parenting Plan**

8 (1) The Parenting Plan signed by the Court on this date is approved and incorporated as  
9 part of these findings.

10 (2) The Court finds it is in the children's best interests that they reside primarily with the  
11 mother, while having significant residential time with the father.

12 (3) RCW 26.09.187(3)(a) sets forth the factors the court must consider in determining  
13 residential provisions of the parenting plan. The court finds that applying the evidence to  
14 the statutory factors indicates the mother is the parent with whom the children should  
15 primarily reside:

16 **RCW 26.09.187(3)(a)(i): The relative strength, nature, and stability of the child's  
17 relationship with each parent. [This factor is given the greatest weight, per  
18 subsection (3)(a).]**

19 (4) Although there is no doubt that both parents love their children very much and the  
20 children love their parents, this Court finds that strength and nature of the children's  
21 relationship is stronger with the mother than with the father based on the evidence  
22 presented at trial.

23 (5) Six witnesses called by Ms. Cheng testified about the children's relationship with their  
24 mother. These witnesses included Heather Elliott, Katie Johnson, Anna Katherine  
Curfman, and Lizbeth Doving, all of whom reside on Bainbridge Island (where the parties  
reside) and have children who either play frequently with the Cheng children or who have  
attended school with one of the Cheng children or who have done both over the years.  
Another witness, Annabel Channel-Johnson worked in the Cheng's home for over a year,  
up until June 2013 and observed Ms. Cheng and her children around lunchtime four days  
a week. Ms. Cheng's sister, Jenne Louie also testified. She lives in California, but has  
spent significant time with Ms. Cheng and the children over the years. Each of these  
witnesses testified based on direct observation of the children's interactions with their  
mother in the home, at school or at other social functions in their normal, day-to-day life.  
All of them described a happy, playful loving, attentive, nurturing, trusting rapport  
between mother and each of the children. None of them had ever known Ms. Cheng to  
raise her voice or lose her temper.

1 (6) Witnesses called by Mr. Cheng also testified to the strong, positive bond between the  
2 mother and children. Joanie Klorer was hired by Mr. Cheng post-separation to babysit the  
3 children and to provide supervised visitation of Ms. Cheng. When asked to describe Ms.  
4 Cheng's parenting, Ms. Klorer described her as "very patient, very loving, very kind and  
5 gentle," and that the children definitely have a very happy, loving relationship with the  
6 mother. Barbara Von Reis, Charlie's preschool teacher, described Ms. Cheng as "very  
7 loving, very playful, very kind." Mary Knighton, Charlie's kindergarten teacher, described  
8 Charlie as "well-bonded with Julia," and "always happy to see her."

9 (7) The parenting evaluator, Martha Wakenshaw, was provided with eighteen  
10 declarations in support of the mother's parenting. These were the statements of friends,  
11 teachers, and other professionals close to the family, who had first-hand interactions and  
12 observations of the mother with the children over considerable time. In contrast, Mr.  
13 Cheng provided Ms. Wakenshaw with 6 declarations in support of his parenting, written  
14 by his brother and several out-of-state business associates, who lack knowledge of the  
15 children and have not observed him parenting. None of them testified at trial, while  
16 several of Ms. Cheng's declarants did. Although Mr. Cheng has considerable extended  
17 family in the greater Seattle area, consisting of about five households, none of them  
18 wrote affidavits or testified. It is especially noteworthy that Mr. Cheng's mother did not  
19 testify. There was substantial testimony about her role in helping Mr. Cheng take care of  
20 the children after the divorce was filed; and she even bought a condominium on  
21 Bainbridge Island where she lives part time. The lack of first-hand witnesses to Mr.  
22 Cheng's parenting in contrast with the abundance of witnesses to Ms. Cheng's parenting  
23 is significant, especially in light of Mr. Cheng's claims, which were contradicted by several  
24 of the witnesses.

(8) Martha Wakenshaw, should have been one of the main sources on which the court  
relies for information regarding the relative strength, nature, and stability of the children's  
relationship with each parent. However, her credibility and reliability are significantly  
weakened by an apparent bias in her reporting. However, the court is able to make use of  
certain factual information passed along in her reports and testimony. Ms. Wakenshaw  
testified that she did not contact any of Ms. Cheng's declarants, but she did interview  
some of Mr. Cheng's declarants. She wrote in her Interim Report of October 15, 2013,  
"Collaterals on behalf of the father feel that he is the more stable parent." (Exhibit 2,  
p.45). She failed to clarify in her report that the father's collaterals have practically no  
first-hand observation of his parenting (with the exception of his brother in Boston, who  
sees him once or twice a year on vacations). She testified at trial she was unaware how  
far out of state Mr. Cheng's contacts lived, she was unaware many of them had never  
met the children and she was unaware some hadn't seen Mr. Cheng for years. At trial,  
Mr. Cheng testified that one of his collaterals, Ms. Van der Zande, resides in California  
and sees him once or twice per decade and she met the children once three years ago.  
His business associate, Mr. Regnerus met the children once three or four years ago and  
he lives in Chicago. His business associate Mr. Berkley has never met the children and  
sees Mr. Cheng once or twice a year in Chicago or Dallas. His business associate, Mr.  
Dickson lives in Florida, has never met the children and saw Mr. Cheng two or three  
years ago. The contrast between the knowledge possessed by Ms. Cheng's declarants

1 and Mr. Cheng's declarants, and Ms. Wakenshaw's failure to treat them accordingly, calls  
2 into question her treatment of information presented to her.

3 (9) Ms. Wakenshaw cited some of Ms. Cheng's third-party declarations in her second  
4 report of February 28, 2014. Ms. Wakenshaw had these declarations in her possession  
5 when she wrote her Interim Report of October 15, 2013. However, Ms. Wakenshaw failed  
6 to present the observations of collaterals in her Interim Report, which would have helped  
7 the court assess the mother's relationship with the children. In her February report, Ms.  
8 Wakenshaw quoted Linda Andreassen, who has been good friends with Ms. Cheng for  
9 ten years, "Ms. Andreassen finds Julia to have 'exceptional parenting skills...Without  
10 exception or doubt, I consider her to be one of the most attentive, devoted, thoughtful,  
11 emotionally-aware, conscientious and loving parents I have ever come across." (Exhibit  
12 3, p.28). Ms. Wakenshaw also reported the observations of Ms. Sarah Frost, a friend of  
13 Ms. Cheng's who is a social worker with a background in working with children and  
14 families:

15 On several occasions I saw other parents seeking advice from Julia about  
16 special diets, learning disabilities, and even parenting practices. Julia  
17 radiated confidence as a mother and her girls have always been full of life  
18 and very happy. It is clear they are strongly bonded to their mother and  
19 seek her out when they are in unfamiliar surroundings or nervous about an  
20 experience. The instances that come to mind when I think about Julia with  
21 her children are typically at drop-offs [at school]. Julia has a strong  
22 connection with all of the parents and their children. Charlie had difficulty  
23 transitioning away from her mother at the start of the school day, but Julia  
24 would stay by Charlie's side and provide positive encouragement and  
engage with other children and parents until Charlie was confident being  
left. Charlie always ran to her mom after school excitedly reporting the day's  
events, something only a child that felt safe would do. My daughter has  
always been comfortable with Julia and would seek her out at school  
events, constantly asking to go to Julia's house to play with Charlie and  
Danny. It isn't common to find a parent that looks at each of their children  
as individuals and is constantly striving to create a life for that child that  
meets their needs, but Julia does.

*Id.* at p.33-34.

19 (10) Ms. Frost wrote she would trust her own special needs son in Ms. Cheng's care. She  
20 also wrote "Julia is compassionate, patient, has a strong knowledge of child development  
21 and possesses excellent parenting skills." The witnesses who testified at trial  
22 corroborated Ms. Frost's observations. Several other witnesses are quoted in Ms.  
23 Wakenshaw's second report and they all speak equally highly of Ms. Cheng's parenting.

22 (11) Ms. Wakenshaw quoted several of Mr Cheng's references in her February 2014  
23 report as well. Mr. Cheng's brother and sister-in-law who reside in Boston, testified that  
24 on their vacations with Mr. Cheng and the family they have observed him as a very

1 involved, capable, loving father. *Id.* at p. 41-42. Ms. Wakenshaw also cited Mr. Cheng's  
2 out-of-state business associates, who spoke of Mr. Cheng as a man of high integrity who  
is very committed to his children.

3 (12) Ms. Wakenshaw failed to clarify in her report that Mr. Cheng's collaterals had either  
4 minimal contact or no contact with the children, while Ms. Cheng's collaterals had  
significant day-to-day interactions with the children and Ms. Cheng. These factors should  
5 have been addressed by the evaluator.

6 (13) Mr. Cheng called the middle child's former preschool and kindergarten teachers to  
7 testify regarding the times he took Charlie to school and stayed with her in class because  
8 she had difficulty separating from either parent at school. Mr. Cheng testified he spent  
9 two years assisting her in class. Ms. Von Reis had Charlie for preschool in 2010-11 for  
10 three days a week from 8:45 to 11:15. She testified that Mr. Cheng brought Charlie to  
11 school "occasionally," and stayed with her sometimes to help her settle. After December  
12 2010, Ms. Von Reis saw him less frequently and she saw Ms. Cheng, who would come  
13 with newborn Danny. She described what a difference Ms. Cheng made in the life of  
14 another child in the classroom, Susu, whose mother was terminally ill that year. Ms.  
Cheng would take Susu home along with her own children and care for her on the  
weekends throughout the school year to help out the family. Ms. Von Reis testified that  
her observation was that Ms. Cheng was very loving and kind and that her care of Susu  
was "a tremendous gift." She testified that Ms. Cheng was the parent who usually picked  
Charlie up after school. She observed that Ms. Cheng helped Charlie cultivate friendships  
with schoolmates. Mary Knighton taught Charlie kindergarten in 2011-12 and 2012-13.  
She testified that Mr. and Ms. Cheng each brought Charlie to school at times and  
sometimes stayed with her until she was settled. She testified that both parents were  
attentive to Charlie's needs and were well bonded with her.

15 (14) In early 2014, Mr. Cheng hired a parenting coach, Mary Tamborski, who lives and  
16 practices in Southern California. She provided telephonic coaching sessions and came to  
17 Washington State once in June to observe him parenting the children at his home for an  
18 afternoon. Ms. Tamborski reported her observations to the parenting evaluator who used  
19 the information in her updated report of July 2, 2014, which functioned as a declaration in  
20 support of Mr. Cheng in response to Ms. Cheng's motion seeking further evaluation and  
21 testing. Ms. Wakenshaw reported Ms. Tamborski's observations of Mr. Cheng, "Victor is  
22 the best student I've ever had, ... [He is] modest, humble, and down-to-earth, ... Victor is  
23 so good at keeping his cool. He's such a good person. He stays strong. He's doing  
24 everything he's supposed to do, ... He is the most patient, loving and tender of fathers."  
At trial, Ms. Tamborski testified about Mr. Cheng's receptiveness to coaching and about  
her observations of his parenting, once on Bainbridge Island and once at the pool at his  
parents' home in Encinitas. While it is laudable that Mr. Cheng sought instruction in  
parenting skills, it is noteworthy that he called no friends, neighbors, or family to testify in  
support of his relationship with the children and instead hired a professional to do so  
based on a few hours of pre-arranged observation under controlled circumstances.

1 (15) Mr. Cheng's own pre-litigation communications suggest that the strength, nature and  
2 stability of his relationship with the children were not well developed as of April 2013 (four  
3 months before separation). Mr. Cheng experienced emotional distance from the children,  
4 and he underwent in therapy in 2012-13, seeking to become a more involved parent and  
5 husband by overcoming debilitating emotional scars from his childhood. There are  
6 several exhibits in which Mr. Cheng acknowledged using his iPad as a buffer to avoid  
7 engaging directly with the children. In April 2012 he wrote, "The reason I use the iPad so  
8 much is I have nothing left in me to give the kids. I'm tired. If they ignore me repeatedly, I  
9 tend to either yell at them or give up a little and just get some work done on my iPad."  
10 (Exhibit 331). In March 2013 he wrote, "Sorry for being defensive the other night about  
11 my iPad usage. ... The kids' nighttime behavior (which is a separate problem) triggers a  
12 number of deep emotions from me that manifest itself by my feeling deep resentment and  
13 lashing out in anger and resentment at the kids. My 'solution' was to use the iPad to  
14 alleviate my resentment, which it does, so at least I could do something somewhat  
15 productive while being ignored and disrespected by my own kids." (Exhibit 220A). In  
16 March 2013 Mr. Cheng posted on Facebook, "My 5yr old daughter asks my wife, 'Mom,  
17 what's your hypothesis about why dad is always on his iPad?'" (Exhibit 383). The  
18 psychological evaluator, Dr. Bruce Olson, testified that Mr. Cheng withdrew into  
19 electronics to control his emotions. Mr. Cheng testified he would use the iPad to sneak in  
20 work while waiting for the children to complete their bedtime routine.

21 (16) Ms. Cheng testified that she had to intervene at times when Mr. Cheng would  
22 become frustrated and lose his temper while assisting the children with the bedtime  
23 routine. She described him getting loud and shaking all over in anger to the point that the  
24 children and Ms. Cheng were frightened. Ms. Cheng would take over helping the children  
to bed and Mr. Cheng would go off by himself somewhere else in the house or out to the  
movies to decompress. When questioned about his admissions of rage toward the  
children, Mr. Cheng testified that he was only writing about his inner feelings of anger,  
which he did not express outwardly. This is contradicted by what he wrote, which was  
that he yelled, lashed out in anger at the children and behaved like a "raging lunatic."  
(Exhibit 220B). His written descriptions were corroborated by Ms. Cheng's testimony.

(17) There were other incidents of questionable parenting by Mr. Cheng that cause this  
Court concern; once he duct taped Danny to her high chair, including her arms, and on at  
least one occasion Mr. Cheng drove and abruptly broke hard when the children were  
not wearing their seatbelts, causing them to be thrown forward sustaining minor injuries –  
just to teach them a lesson.

(18) Dr. Olson, the court-appointed psychological evaluator, questioned Mr. Cheng about  
the emails from the spring of 2013 in which he describes his struggle to maintain  
composure around the children and the therapy he pursued to help him engage with  
them more positively. Dr. Olson testified that the Pia Melody-based therapy Mr. Cheng  
underwent in 2012-13 was a "non-acceptable, non-normative model" and turned out to be  
"iatrogenic," destabilizing him and contributing to the disintegration of the marriage. Most  
of the therapy was conducted over the phone with Michelle Piper, who lives and works in  
California. Ms. Piper reported to Dr. Olson that she was only a life coach for Mr. Cheng

1 and not his therapist. (Exhibit 8, Report of Psychological Evaluation of Mr. Cheng, p. 22).  
2 Dr. Olson reported of his interview of Ms. Piper, "She recalled that [Mr. Cheng]  
3 commented on how 'disconnected' he was from his children and was concerned about  
4 how he could get more connected with his children." Regarding Mr. Cheng's parenting,  
5 Ms. Piper reported, "he felt he was 'repeating ways he was brought up' and 'that was why  
6 he was in therapy.' He was 'unhappy about the years he missed as a parent with his  
7 children' and was 'interested in making up for lost time.'" She further stated he had to  
8 "move from a theoretical understanding of parenting to an emotional understanding of  
9 parenting." And, "She felt that 'a lot of his self-worth is based in his business.' He is trying  
10 to expand his relationship to his kids." *Id.* at p. 22-23.

11 (19) Dr. Olson's report quoted extensively from Mr. Cheng's email dated April 5, 2013. *Id.*  
12 at p.4; Victor Cheng's email: Exhibit 220B. Mr. Cheng described himself in the throes of a  
13 breakdown which included a tearful process of emotional "thawing." He states, "Okay, I'm  
14 now up to 26 crying or near crying episodes in the last 23 days." "Apparently I have  
15 'frozen' emotions from childhood...where basically I learned to feel nothing, be numb." "I  
16 am way, way, way out of my element here...I cried 6 times today, could barely breathe."  
17 Further on, he wrote, "I see every relationship in my life with greater clarity. I also see that  
18 most of the people who I have perceived as attacking me – you and the kids – have no  
19 bad intent and are basically just doing things to take care of yourselves using what you  
20 and they happen to know." [...] "My seemingly out of nowhere raging outbursts with the  
21 kids have come down. I now realize it was the exact same rage I felt when my dad didn't  
22 listen to me about Larry picking a fight. I was so angry as a 9-year-old, I picked up the  
23 glass coffee table and tried to throw it across the living room. When the girls ignore my  
24 'brush your teeth' remarks, I go right back to being that 9-year-old and the rage just leaps  
out. Apparently this is common for one of my Multiple F-ing issues...The inability to  
express with moderation...I'm either a passive doormat or a raging lunatic, all signs of  
these underlying traumatic experiences that get 'triggered' by something in the present  
that reminds me of a latent memory of the past. The downside is when I'm in my  
doormat/raging lunatic mode, I'm not a very good listener with the kids, I can't think  
logically (only emotionally and unconsciously) and I can't be emotionally present in the  
present. Because the present only serves as a reminder of the past.... Now my ability to  
separate the two is much stronger and I don't commingle the two nearly as often. I know  
the kids have noticed a change. I think all this work is why Charlie has started to open up  
to me these last few months, when she couldn't previously (I was too 'walled off')." (Exhibit 220B).

(20) Before Mr. Cheng filed for divorce, he acknowledged his own difficulties relating to  
the children; however, once he filed for dissolution and sought supervised visitation  
against Ms. Cheng, he claimed in his declaration of August 2, 2013 that it was her  
relationship with the children that was compromised by her uncontrolled anger, caused  
by her unresolved family-of-origin-related issues. He wrote, "While she has been a stellar  
mom in many facets of motherhood (nutrition/allergy management, clothing, educational  
options), she has unfortunately replicated the abusive environment she grew up  
accustomed to. ...she often is not aware of her own anger level until after she bursts out  
into a rage, and our daughters fear her as much as she feared her father and his rage

1 during her childhood." (Declaration of Victor Cheng, August 2, 2013, p.6) In the same  
2 declaration he misrepresented the purpose of two workshops Ms. Cheng attended in July  
3 2013 (which he had signed her up for and made the travel arrangements for). He  
4 declared that the workshops were for anger and rage management; however, he  
5 admitted at trial that that was an incorrect characterization and that the workshops  
6 actually covered a variety of family-of-origin issues from the Pia Melody therapeutic  
7 perspective.

8 (21) Mr. Cheng provided no evidence other than his own testimony about Ms. Cheng  
9 raging at the children. No one but he had anything negative to say about Ms. Cheng. His  
10 own letters show he was the one struggling with emotional dysregulation and poor  
11 relationship with the children. Dr. Olson's report contains a lengthy description of his  
12 unhappy childhood and of his mother's negative qualities. (Exhibit 8, pp.12-13). His daily  
13 schedule for the week before separation included a "self-care" day in which he attended  
14 Pilates, massage and chiropractor. (Exhibit 220C). He did that while Ms. Cheng was  
15 homeschooling two of the children and coordinating and taking the children to their  
16 summer enrichment camps. Despite Mr. Cheng's voluminous emails to Ms. Cheng  
17 describing his own problems relating to the children (the parties communicated via email,  
18 even when they were in the same house), he did not produce any emails in which he  
19 discussed perceived parenting deficits on the part of Ms. Cheng.

20 (22) Dr. Olson administered numerous psychological tests on Mr. and Ms. Cheng.  
21 Neither parent was diagnosed with a major psychological disorder per the DSMV,  
22 however, each had issues of significant concern which require therapy. Mr. Cheng has  
23 narcissistic and obsessive compulsive traits and Ms. Cheng has adjustment disorder with  
24 depression and anxiety features. Both have issues with controlling their anger. Dr. Olson  
also considered their Chinese heritage, but found no need for a formal cultural  
assessment because both Mr. and Ms. Cheng are very educated, articulate, fluent in  
English and fully assimilated into American culture.

(23) The reports and testimony of Martha Wakenshaw, the court-appointed parenting  
evaluator, were of minimal assistance to the court. She failed to maintain impartiality and  
she failed to address the statutory factors pertaining to parenting plans. At the outset of  
the case, she was appointed to conduct an interim evaluation during the time Ms. Cheng  
was subject to supervised visitation. Ms. Wakenshaw published her interim report on  
October 15, 2013 (Exhibit 2) and testified at an evidentiary hearing on November 18,  
2013. Judge Roof of this court presided over that hearing and his findings raised several  
concerns about Ms. Wakenshaw's work. Judge Roof noted, "The court's primary concern  
is that Mr. Cheng's statements appear to be accepted as fact by Ms. Wakenshaw and  
Ms. Cheng's statements appear to be suspect." (Exhibit 222, p.2). The trial court finds  
that Ms. Wakenshaw failed to correct her lack of objectivity and continued to show undue  
support for Mr. Cheng throughout her work on this case.

(24) Ms. Wakenshaw misrepresented some facts. At the November 18, 2013 evidentiary  
hearing and in her interim report, she recommended that Ms. Cheng should have limited  
time with the children and no overnights. She stated the reason for these limitations was

1 her understanding from "collateral references" that extended periods of time with the  
2 mother are detrimental to the children. Upon closer questioning by Judge Roof, she  
amended her testimony to say only Mr. Cheng made that claim. *Id.* at p.3.

3 (25) Ms. Wakenshaw was less than forthright regarding her observations of the parties'  
4 three-year-old daughter. Ms. Wakenshaw reported, "In her play with the bunny figurine,  
5 Danny called the bunny 'mommy' and said that 'mom is scary.'" (Exhibit 2, p.38). Ms.  
6 Wakenshaw identified Exhibit 400 as a copy of the toy bunny she gave the child to play  
7 with on the day of the evaluation. The bunny is dressed up as a witch for Halloween. Ms.  
8 Wakenshaw provided no clarification in her report that the mommy bunny was dressed  
9 like a witch. Ms. Wakenshaw acknowledged at trial that she was aware the intended  
reader of her report was the court. When questioned about the likelihood her report could  
mislead the reader, Ms. Wakenshaw testified that the bunny is not dressed as a witch,  
but is simply "a cloaked figure." That statement was impeached with a transcript from the  
November 18, 2013 evidentiary hearing in which she referred to the toy as "the witch  
figurine." Ms. Wakenshaw reported and testified that none of the children indicated any  
fear of their mother and were delighted to be in their mother's presence.

10 (26) At the outset of her involvement in the case, Ms. Wakenshaw was provided the  
11 above-mentioned emails written by Mr. Cheng describing his uncontrolled emotions,  
12 resentment of the children and "raging outbursts" at them and his retreating into his iPad  
13 as a means of disengaging from them. Judge Roof found that she had ignored those  
14 admissions from Mr. Cheng about his own parenting difficulties, but that she had based  
15 her conclusions (that the mother should have limited time with the children and no  
16 overnights) on communications provided to her by Mr. Cheng, namely the text from Ms.  
17 Cheng in which she asks Mr. Cheng to return home from his walk because it was "chaos"  
18 at bedtime. Even though Judge Roof raised that concern and Dr. Olson quoted these  
19 emails and expressed significant concern about Mr. Cheng's mental state in 2013, based  
20 on those communications, Ms. Wakenshaw never addressed them in her later reports in  
21 February and July 2014. When questioned at trial, she acknowledged receiving the  
22 emails at the beginning of her engagement in this case. When asked why she did not  
23 address them in her reports, she said, "I don't have a reason."

17 (27) Another significant issue raised by Dr. Olson, which Ms. Wakenshaw ignored, was  
18 Mr. Cheng's need for therapy to address his boundary crossing in interpersonal  
19 relationships. Dr. Olson recommended that Mr. Cheng receive "specific attention" to this  
20 area, stating, "This is an area of particular concern, given the fact that he has three  
21 female children." (Exhibit 8, p.26). Ms. Wakenshaw left this out of her follow-up report in  
22 February 2014. When questioned at trial as to the reason why she did that, she stated, "I  
23 don't have an explanation."

21 (28) While in her February 2014 report, Ms. Wakenshaw quoted Alex as saying she  
22 doesn't see her father as much as she sees her grandmother, Ms. Wakenshaw inserted  
23 her own commentary, stating, "Factually, Alex spends a far greater amount of time with  
24 her father than her grandmother." (Exhibit 3, pp.19, 21). When questioned about this at  
trial, she testified that she received contradictory information from Mr. Cheng regarding

1 how much time his mother takes care of the children and she doesn't take everything a  
 2 child says at face value. She admitted that, in this case, she believed the father over the  
 3 child, but when it came to Charlie's claim that her mother hit her in the head during a  
 4 tantrum, Ms. Wakenshaw believed the child over the mother.

5 (29) The Court finds that the children's relationship with the mother is of a greater  
 6 strength, nature, and stability than their relationship with the father.

7 **RCW 26.09.187(3)(a)(ii): The agreements of the parties.**

8 (30) Up until separation, the parties agreed that Ms. Cheng would be the stay-at-home  
 9 mother and the primary caregiver

10 **RCW 26.09.187(3)(a)(iii): Each parent's past and potential for future performance of  
 11 parenting functions as defined in RCW 26.09.004[3], including whether a parent  
 12 has taken greater responsibility for performing parenting functions relating to the  
 13 daily needs of the child;**

14 (31) The mother has undisputedly been the primary caregiver for the children throughout  
 15 their lives. Mr. Cheng admitted this to Dr. Olson (Exhibit 8, p.3) and to Martha  
 16 Wakenshaw. (Exhibit 3, p.3). Mr. Cheng testified that in the last few months before  
 17 separation, Ms. Cheng did not eat dinner with the family; however, he did not deny that  
 18 Ms. Cheng cooked the dinners and that she was using the dinner hour to allow Mr.  
 19 Cheng to watch over the children while she worked on the home remodeling project in  
 20 the next room. The remodel took about a year, and in the spring of 2013 the family had to  
 21 move from one rental to another and then to Mr. Cheng's parents' home in California  
 22 while waiting. Finishing the project was a priority for Ms. Cheng, who wanted to get the  
 23 family settled into their own home.

24 (32) Mr. Cheng acknowledged that Ms. Cheng was the primary parent in his March 11,  
 2013 email (Exhibit 335) to her in which he states: "Thank you for taking the kids on your  
 own this week.... I also realize I've never thank(ed) you often enough for being the one  
 who stayed home with the kids and gave up your career. I've been busy working through  
 my own issues the past year or so, and now have the emotional capacity to see your  
 sacrifices (previously too occupied on my own issues to really see and appreciate it.)"

(33) With regard to the parenting functions defined in RCW 26.09.004(2) Ms. Cheng is  
 the parent who took the greater responsibility for meeting the children's daily needs:

**RCW 26.09.004(2)(a) Maintaining a loving, stable, consistent, and nurturing  
 relationship with the child.**

(34) See above discussion regarding each parent's relationship with the children.  
 The evidence shows that the mother maintained a more loving, stable, consistent  
 and nurturing relationship with each of the children.

1 **RCW 26.09.004(2)(b) Attending to the daily needs of the child, such as feeding,**  
2 **clothing, physical care and grooming, supervision, health care, and day care,**  
3 **and engaging in other activities which are appropriate to the developmental**  
4 **level of the child and that are within the social and economic circumstances of**  
5 **the particular family.**

6 (35) The record shows that Ms. Cheng was the one who primarily attended to the  
7 daily needs of the children.

8 (36) Mr. Cheng participated, but to a lesser extent. Mr. Cheng testified he prepared  
9 all the breakfasts and lunches for the children. However, Annabel Channel-Johnson  
10 testified she was in the home at lunchtime for the year leading up to separation and  
11 even though Mr. Cheng was working in his home office over the garage, she never  
12 saw Mr. Cheng prepare lunch or even come down to eat lunch with the family. She  
13 observed that Ms. Cheng prepared and took Mr. Cheng's lunch up to his office each  
14 day.

15 (36) Ms. Channel-Johnson described the way Ms. Cheng had set up the household  
16 to suit the children's needs. The living room was a playroom and the dining room  
17 was a children's library. The children played very well with each other and created  
18 "nests" of toys and crafts throughout the house.

19 (38) Lizbeth Doving testified that her daughter loves to play at Ms. Cheng's home  
20 because Ms. Cheng facilitates all sorts of craft projects, even though they caused a  
21 mess. She stated that Ms. Cheng allows the girls to be creative and free in their  
22 play.

23 (39) Mr. Cheng claimed to be the one who handled the children's bedtime routine  
24 when he wasn't traveling; however, testimony and written communications showed  
that Ms. Cheng often fulfilled that task, even when Mr. Cheng was at home.

(40) After separation, while Ms. Cheng was on supervised visitation, Mr. Cheng had  
to consult her regarding the school schedule for Danny, because she was the one  
who arranged schooling. (Exhibit 322). He also had to consult Ms. Cheng regarding  
what clothing and shoes to buy the children for the new school year, because that  
was always Ms. Cheng's responsibility. (Exhibit 344).

(41) Mr. Cheng traveled extensively for work and personal development, leaving Ms.  
Cheng home as the sole care provider for the children on many occasions. Mr.  
Cheng testified about a family Christmas card he helped compose in 2010. (Exhibit  
401). He wrote, "Victor tried to write three sentences this year about something  
other than work, and failed miserably, since he didn't really do anything other than  
work this year." He wrote that he has on the road giving 50 speeches, "But he got  
his wake up call that he was traveling too much when he missed Danny [the third  
child] sitting up for the first time, and Alex chimed in without losing a beat, 'Yeah, if  
you weren't *always* on your *business trips*, you would have seen it!" In March 2013,

1 Mr. Cheng wrote to Ms. Cheng that he would be traveling away from home 23 days  
2 in the next three months. (Exhibit 333). He sent other emails to her from his trips  
3 that spring (e.g. Exhibit 335). Post-separation, Mr. Cheng told the parenting  
4 evaluator that he cut 80% of his scheduled travel time for the next twelve months.  
5 (Exhibit 2, p.12).

6 (42) The court finds Ms. Cheng has been the one primarily attending to all the  
7 children's daily needs. Several witnesses testified regarding Ms. Cheng's  
8 exceptional attention to her children's nutrition and her ability to counsel other  
9 mothers whose children have dietary restrictions. Ms. Cheng scheduled all the  
10 medical and therapeutic appointments and took the children to them. Mr. Cheng  
11 attended some of them. Ms. Cheng is the one who researched and located  
12 specialists to address Alex's special needs. She has identified the children's  
13 individual interests and talents to determine what extracurricular activities they  
14 would like, such as horseback riding, ballet, sewing, art, surfing, etc. She took  
15 Charlie to piano lessons and practiced piano with her. Before and after separation,  
16 Ms. Cheng arranged for the children's summer camps and activities. (Exhibits 346,  
17 347, 348).

18 **RCW 26.09.004(2)(c) Attending to adequate education for the child, including  
19 remedial or other education essential to the best interests of the child.**

20 (43) Ms. Cheng assumed the primary role attending to the educational needs of all  
21 three children. She conducted the research, selected Waldorf schools, recognized  
22 Alex's learning difficulties and her need for testing, therapy and alternative  
23 educational experiences, including homeschooling, which Ms. Cheng trained for and  
24 personally executed. She read a book by Brock Eide, M.D. and his wife, Fernette  
Eide, M.D., *The Mislabeled Child*, and recognized the need to have Alex tested by  
the Eides in 2011. Ms. Cheng enrolled Alex in a private school and went to the  
school daily to tutor Alex in math. After the Eides recommended homeschooling for  
Alex, Ms. Cheng began homeschooling in November 2011 and continued through  
the end of that school year. Ms. Cheng later discovered the Arrowsmith educational  
methodology, a specialized program for dyslexic children, and she spearheaded the  
effort to bring it to Kitsap County to serve students with learning disabilities like  
Alex's. Ms. Cheng homeschooled Alex and Charlie during the summer of 2013. She  
was planning to homeschool Charlie in the 2013-14 school year, but Mr. Cheng  
withdrew his consent after separation and attempted to unilaterally enroll Charlie in  
Voyager school. (Exhibit 323). Mary Knighton, Charlie's kindergarten teacher,  
testified that at the parent-teacher conference in the spring of 2013 (which both  
parents attended) they discussed the option for 2013-14 of Charlie homeschooling  
with Ms. Cheng for part of the day and attending the Waldorf School for part of the  
day. Ms. Cheng also wanted to homeschool Alex in the 2014-15 school year as the  
only way to reliably meet her special needs, but Mr. Cheng would not agree to it.

(44) Several witnesses testified about Ms. Cheng's extensive research and  
knowledge of educational resources and methodologies, particularly with regard to

1 Alex's special needs as a "twice-exceptional" learner, who is both gifted and  
2 dyslexic with some other neurological issues that need accommodation. Dr. Brock  
3 Eide reported that Ms. Cheng's homeschooling of Alex in 2011-12, in combination  
4 with supplemental learning experiences arranged by Ms. Cheng, was "as close to  
5 perfect as she could receive at this point." (Exhibit 377, p. 25).

6 (45) Ms. Wakenshaw's second report quotes Ms. Cheng's collateral source, Linda  
7 Andreassen: "Ms. Andreassen said that 'Julia always exhibited a patient and 'in your  
8 own time' manner with her children. Alex had early struggles with separation for  
9 preschool and Julia tried several schools, including our Waldorf-inspired one. Julia's  
10 patience with Alex during this period, for me, defines and exemplifies her devotion to  
11 her children and her overall parenting efforts.' Julia sat in the classroom for weeks  
12 while Alex found her way in her own time and way. 'At no time did Julia ever raise  
13 her voice or become frustrated with Alex. I respected her tremendously for those  
14 efforts and her devotion to Alex's well-being.'" (Exhibit 3, pp.28-29).

15 (46) Mr. Cheng had been involved in the children's education to a lesser extent. He  
16 attended parent-teacher conferences. He drove the children to or from school at  
17 times. He accompanied Charlie to preschool and kindergarten at times when she  
18 didn't want to stay on her own in the first quarter of 2010 and 2011. He participated  
19 in Alex's testing process with the Eides. He agreed to have Ms. Cheng homeschool  
20 Alex from November 2011 through June 2012, and to homeschool Alex and Charlie  
21 in the summer of 2013.

22 (47) After Mr. Cheng would not allow Ms. Cheng to homeschool Alex during the  
23 2014-15 academic year, Ms. Cheng proposed the Dartmoor school in Seattle as an  
24 alternative. Ms. Cheng heard about Dartmoor from a local parent and she attended  
an information session. When Mr. Cheng inquired whether Ms. Cheng agreed with  
the Dartmoor scheduling, she responded, "I am not thrilled with Danny being in  
aftercare [necessitated by the long commute to and from Seattle for Alex]. But since  
my first choice (homeschooling Alex 'til she's caught up and ready for regular  
school) is not an option given your objections, I don't see another choice." (Exhibit  
64). Alex started at Dartmoor in September 2014. She attends two hours of class in  
Math and English, four days a week. It costs \$7,800 for three months. (Exhibit 56).

(48) Ms. Cheng testified that within weeks, she found Dartmoor to be inadequate to  
meet Alex's needs and it is impractical for the family due to the 4-hour daily  
commute. Denise Leiby, the Dartmoor administrator, testified that she was not  
familiar with Alex's diagnoses and did not recall reading Dr. Eide's report on Alex.  
Ms. Leiby said she relies on the entrance testing that she performed on Alex to  
develop her curriculum. Ms. Cheng was refused copies of Alex's schoolwork,  
refused interviews with the teachers and refused copies of their resumes. Ms. Leiby  
testified that all parent interaction is handled by her alone; the parents don't have  
access to the teachers. Ms. Leiby testified that one of Alex's teachers had no  
teacher training; the other one started training to become a certified teacher, but  
stopped. Neither of them have training in special education or teaching credentials.

1 (49) In November 2014, Ms. Leiby sent Mr. and Ms. Cheng copies of what was  
2 represented as Alex's schoolwork. Ms. Cheng questioned Ms. Leiby about a  
3 typewritten, correctly spelled and well-organized 5-paragraph essay, pointing out  
4 that Alex had never written a paragraph yet. Ms. Leiby responded that the teacher  
5 wrote it from Alex's dictation. (Exhibit 353, Bates pp. 15,055-58; 15,032; 15,023).  
6 Much of the math work in the Dartmoor file consisted of free online worksheets. Ms.  
7 Cheng testified that the language arts work produced by Alex at Dartmoor was at or  
8 below second grade level, contrary to Dartmoor's claim that she was working at the  
9 sixth grade level. Ms. Cheng also testified that Dartmoor's claims regarding Alex's  
10 progress in math are unfounded, given Alex's historic problems with learning  
11 retention and her inability to reproduce the work at home. Ms. Cheng testified, and  
12 Ms. Leiby corroborated, that Dartmoor does not follow the Common Core  
13 Standards, which have been adopted in Washington State. This conflicts with  
14 Dartmoor's claims regarding the grade level of achievement Alex has attained in her  
15 time there. Ms. Cheng testified Alex is performing below fifth grade level.  
16 Chronologically, Alex should be in sixth grade.

17 (50) Dr. Brock Eide tested Alex and wrote a report in 2011 regarding the child's  
18 special educational needs and how they would best be met. He explained Alex is  
19 gifted and has dyslexia and difficulties with low working memory and processing  
20 speed. This causes lack of retention of facts from one day to the next. She also had  
21 significant difficulty with written expression. He testified that it can be a real  
22 challenge with children like Alex to maintain confidence and positive self esteem  
23 due to comparisons to the peer group. He testified that children like Alex do tend to  
24 eventually catch up, neurologically, with appropriate instruction and time. He finds  
that in the greater Seattle area, there are "not a lot of great options for twice  
exceptional students" like Alex. He stated that two classes of tutoring at Dartmoor  
does not constitute an adequate education. He reported that for Alex, a combination  
of homeschooling and cooperative learning classes is ideal. (Exhibit 377, p.25). He  
testified that parents have great success in homeschooling, with good college  
entrance rates. He testified that an enrichment program addressing Alex's  
giftedness would be very helpful. When questioned by the court regarding what form  
the gifted enrichment should take, Dr. Eide responded that a gifted program should  
address higher concepts, but should not be an acceleration of basic skills. He stated  
Alex would flounder in a program designed to catch up 1.5 years of material in one  
year of school. An accelerated program is exactly what Dartmoor purports to follow,  
and the benefit Mr. Cheng testified he expects Alex will obtain from her time there.  
He testified Dartmoor promises to bring Alex up 2.5 grade levels in one academic  
year. He testified he wanted to keep her in Dartmoor for one to two years and then  
transfer her to Hyla Middle School on Bainbridge Island.

(51) Ms. Cheng testified that Alex's academic progress has been seriously  
compromised since separation. Alex's 2013-14 year at Arrowsmith School (a private  
program especially designed to serve dyslexic students) was of little benefit. Alex  
was unable to concentrate on the exercises, due to the stress of the divorce  
process. Ms. Cheng testified that Alex's current experience in the 2014-15 school

1 year at Dartmoor is not meeting her needs. She is very concerned about Alex losing  
2 time in these crucial years when she ought to be receiving appropriate education to  
3 join her peers in middle school or high school. Ms. Cheng proposes to homeschool  
4 Alex and enroll her in courses at Island Educational Services on Bainbridge until she  
5 is ready to enter either a private middle school or high school.

6 (52) Mr. Cheng testified that when he arrives at Dartmoor with Alex before her class  
7 begins in the morning, that they sit in the parking lot and wait for an hour. He wrote  
8 to Ms. Cheng, "We've been sitting in the Dartmoor parking lot for an hour today just  
9 killing time like we do every day." (Exhibit 368). Ms. Cheng, on the other hand,  
10 testified that she arranged a jewelry-making class for Alex at a nearby bead shop,  
11 so that she could pass the time creatively before her Dartmoor class begins.

12 (53) The court finds Ms. Cheng has put forth the majority of effort toward the  
13 children's education and that her insight and judgment regarding Alex's special  
14 needs are superior to those of Mr. Cheng. Prior to separation, Ms. Cheng did the  
15 research and Mr. Cheng followed her lead regarding the educational decisions. Due  
16 to the inability of the parties to agree on Alex's education post-separation, the  
17 negative consequences she is experiencing, and the urgency to get her back on  
18 track with an educational program suited to her needs, the court finds that the  
19 mother should have sole decision making in education for Alex only. Danny and  
20 Charlie are both doing well at their schools; therefore, decision making for their  
21 educational decisions will be jointly made.

22 **RCW 26.09.004(2)(d) Assisting the child in developing and maintaining**  
23 **appropriate interpersonal relationships.**

24 (54) The record shows that Ms. Cheng is the parent who has helped the children  
develop and maintain friendships and connection to their community. Several  
witnesses testified at trial about their interactions with her and the children at school,  
at home and at other social events. Mr. Cheng had no such witnesses. Lizbeth  
Doving testified that her daughter has been a good friend of Alex's for years. She  
had many play dates with the Cheng girls at their home prior to separation and at  
Ms. Cheng's home with the girls post-separation, but she has never been invited by  
Mr. Cheng to play at the large family home at Rockaway Beach.

(55) Ms. Cheng took the children to Thanksgiving dinner in 2014 with all of Mr.  
Cheng's extended family in the greater Seattle area, which Mr. Cheng did not  
attend. This demonstrated Ms. Cheng's support of the children's interpersonal  
relationships with both sides of their family.

(56) Mr. Cheng testified that the family home should be sold because there are not a  
lot of children in the neighborhood." Ms. Cheng testified that children typically  
socialize on Bainbridge Island by way of scheduled playdates, and this is what the  
children are accustomed to. Katie Johnson testified that Ms. Cheng and the girls  
socialize regularly with their immediate neighbors in addition to arranging playdates

1 with those who live farther away. Ms. Cheng testified that she has been building  
2 community and friendships along with the girls throughout their lives. She and the  
3 girls still get together with a group of friends she and Alex made in California when  
4 Alex was a newborn. Ms. Cheng provided many photographs of activities she  
5 participated in with the children over the years and they include many occasions  
6 with friends, school and community. (Exhibit 351). Mr. Cheng provided photographs  
7 of himself with the children, but none of his included friends, schoolmates, or  
8 community members. (Exhibit 73).

9 (57) The court finds the mother is the one who most assists the children in  
10 developing and maintaining appropriate interpersonal relationships.

11 **RCW 26.09.004(2)(e) Exercising appropriate judgment regarding the child's**  
12 **welfare, consistent with the child's developmental level and the family's social**  
13 **and economic circumstances.**

14 (58) This Court finds Mr. Cheng made a gross error in judgment by getting a  
15 restraining order against Ms. Cheng and unnecessarily subjecting the children to  
16 supervised visits for four months.

17 (59) Mr. Cheng is not as aware of his children's needs as Ms. Cheng is and he has  
18 demonstrated a reckless disregard for their feelings and emotional well-being.  
19 Supervised visits were not necessary, based on all the evidence and lack of CPS  
20 findings or criminal charges filed against Ms. Cheng. The children were separated  
21 from Ms. Cheng for approximately four months with no overnights and supervised  
22 visits for several hours a day. This was especially harmful to not only Ms. Cheng,  
23 but the kids, especially the younger ones, Danny who was only 3 and Charlie who  
24 was 6, where they had been taken away from their mother—their primary caretaker  
and nurturer.

(60) Mr. Cheng intentionally misused the term "rage" to get the maximum advantage  
in the dissolution. He got the upper hand when he was able to get a restraining  
order against Ms. Cheng based on his misuse of the term "rage" throughout his  
declaration, no corroboration of Charlie's statements of abuse—and CPS' lack of  
findings, and no physical evidence of any harm to Charlie.

(61) Dr. Olson and Ms. Linda Stranahan both made note of Mr. Cheng's emotionally  
incongruent affect in the wake of the separation and the imposition of supervised  
visitation with allegations of child abuse. Ms. Stranahan found it "weird," and Dr.  
Olson found it "suggests that Mr. Cheng has further work to accomplish in his  
therapy." (Exhibit 8, pp.19, 25). He was laughing and happy go lucky, while Ms.  
Cheng was devastated and the children were cut off from her.

(62) Mr. Cheng's extreme happiness, under circumstances that were devastating to  
the mother and children, is perhaps best understood in light of the conclusions of Dr.  
Olson. Dr. Olson found, "In the Evaluation, Mr. Cheng appeared egocentric and self-

1 focused, to lack insight into the impact of his own behavior on other people (despite  
2 his history of therapy) and to be inclined to blame others [primarily parents and wife]  
3 for his present situation." (Exhibit 8, p.26). Dr. Olson recommended therapy focusing  
4 on Mr. Cheng's narcissistic traits and a course on anger management "with  
5 particular attention to empathy." *Id.* Dr. Olson described past behaviors of Mr.  
6 Cheng's in which he acted on his own impulses to please himself, while  
7 disregarding the significant negative impact on his wife and children and others. The  
8 court finds Mr. Cheng's conduct at the outset of this litigation furthered his own  
9 interests at the children's expense.

10 (63) Mr. Cheng initiated this case on August 2, 2013 by filing a petition for  
11 dissolution and seeking an ex parte restraining order barring Ms. Cheng from their  
12 home on Bainbridge Island and from Mr. Cheng's parents' California home, (where  
13 the family was staying at the time while waiting for their own home to be  
14 remodeled), barring her from the children's schools, and imposing supervised  
15 visitation between her and the children. His declaration accused Ms. Cheng of  
16 raging, screaming, and physical and emotional abuse of the children. He claimed,  
17 "Julia screams at our daughters on a daily basis." He wrote of "daily rage attacks"  
18 over the past 18 months. He used the word "rage" 18 times, "anger" 11 times and  
19 "abuse" 10 times in a 7-page document. He attributed her "rage issues" to her  
20 childhood, which he characterized as abusive. He claimed that Ms. Cheng attended  
21 two workshops in July 2013 to address child abuse, rage and anger. He claimed Ms.  
22 Cheng struck their 6-year old daughter Charlie in the head in a rage on July 25th.  
23 Mr. Cheng succeeded in obtaining the ex parte restraining order and supervised  
24 visitation based on this declaration. Ms. Cheng and the children remained subject to  
supervised visitation for four months, awaiting the outcome of the interim parenting  
evaluation and psychological evaluation. Ms. Cheng was put in a position where she  
had to fight to get even 50% residential time with the children under temporary  
orders.

(64) Mr. Cheng testified that Ms. Cheng is careful not to lose her temper outside the  
home, so nobody else sees it; however, his testimony is not credible in light of the  
significant evidence of Ms. Cheng's excellent mothering and the lack of evidence  
that Mr. Cheng ever raised a concern at any time prior to his filing for dissolution.  
Mr. Cheng's testimony also lacks credibility because his own pre-separation emails  
identify himself as the one "raging" at the children and struggling to overcome an  
abusive childhood that causes him to be a less than adequate parent.

(65) On July 16, he took Ms. Cheng to the workshop he arranged in Arizona with  
Sarah Bridge to instruct Ms. Cheng in the basics of the Pia Melody therapy, the  
same therapy Mr. Cheng was undergoing. He persuaded Ms. Cheng to attend that  
conference by representing it as a marital convention at a spa. When Ms. Cheng  
arrived and saw that it was only the two of them and Ms. Bridge, she learned that it  
was actually a private instructional session set up by Mr. Cheng. While at that  
meeting, Mr. Cheng signed Ms. Cheng up for a three-day women's intensive  
therapeutic retreat with Ms. Bridge starting July 28th.

1 (66) Ms. Cheng testified that on July 25, she spent an hour in a room at Mr. Cheng's  
2 parents' home while Charlie had a long tantrum, refusing to take a nap. Mr. Cheng  
3 was out of the house at the time. Ms. Cheng testified she remained calm and  
4 practiced "hand in hand" parenting throughout the tantrum. Ms. Cheng was sitting  
5 and holding three-year-old Danny while Charlie ran around. Eventually, as Charlie  
6 was kicking, hitting and spitting, Ms. Cheng touched Charlie on the forehead to  
7 establish eye contact between the two of them. Ms. Cheng testified that, at that  
8 point, Charlie calmed down, crawled into her lap, and was ready for her nap. Ms.  
9 Cheng testified that when Mr. Cheng got home later that afternoon, the family went  
10 out to a restaurant for dinner. Charlie was sitting happily next to her mother. While at  
11 dinner, Ms. Cheng told Mr. Cheng about the tantrum and let him know that she and  
12 Charlie had worked it out together. Mr. Cheng did not show much interest and there  
13 was no further discussion about it. Ms. Cheng testified that all three girls played  
14 actively throughout the rest of the evening until 10:00 p.m.

15 (67) When Mr. Cheng testified about the afternoon of July 25, 2013, he originally  
16 stated that when he arrived at the house, Alex immediately came to him and  
17 exclaimed that Charlie and their mother had a big argument at naptime. Later, Mr.  
18 Cheng gave conflicting testimony that he didn't learn anything about the naptime  
19 incident until later that night. He testified that as he took the children to put to bed,  
20 they made it clear they had something very important to talk to him about. He  
21 testified that he then took a shower behind two closed doors. He testified that when  
22 he heard Ms. Cheng yelling at the girls to go to bed, he got out of the shower and  
23 resumed putting the girls to bed. At that point he heard Charlie say Ms. Cheng had  
24 hit her in the head.

(68) The next morning, July 26, Mr. Cheng, without informing Ms. Cheng, took the  
three children to a children's hospital emergency room. Mr. Cheng testified he  
decided to take Charlie and the other girls to the emergency room that morning after  
Charlie told him she had also hit her head on the bed rail. He said he didn't consult  
with Ms. Cheng because she was asleep. He testified that Charlie did not appear to  
be injured in any way and that the girls were playing like normal the morning of the  
26th. He told the hospital social worker that Ms. Cheng "attended an emotional and  
physical abuse prevention program in Arizona a week ago," and that "she is  
scheduled to go to an anger and rage management course." (Testimony of Victor  
Cheng, December 15, 2014). Mr. Cheng admitted at trial that those were  
misrepresentations. Sarah Bridge informed Dr. Olson that Mr. Cheng "inaccurately  
described" the two seminars. Dr. Olson reported, "Ms. Bridge strongly stated that  
'neither workshops that Ms. Cheng attended were described as anger management  
workshops, nor was that their intent.' Ms. Bridge stated that it was 'not what I was  
contracted to do.'" (Exhibit 8, p.21). Dr. Olson further reported, regarding Ms.  
Bridge, "she does believe that Mr. Cheng 'was in contact with lawyers before all of  
this.' She commented, 'It feels pretty planful.' She questions his 'interest and  
motivation.'" *Id.*

1 (69) The parenting evaluator's second report contains portions of the medical record  
2 from Mr. Cheng's emergency room visit with the girls. (Exhibit 3, pp.46-48).  
3 According to the record, "patient does not have any sign of trauma/injury; it was  
4 agreed, however, that 8572 should be contacted given the situation described by  
5 the father, which was corroborated by patient's statement and raises concern." The  
6 child reported that she is "typically hit on her butt and head by mom with hand  
7 maybe once or twice with object. Dad has hit her with his hand on her butt and  
8 head." She also reported, "her mom hit her 'really hard' in the head (motions with  
9 open hand) and she fell back and hit her head on the bottom railing of the bed." The  
10 record indicates that, other than the father spanking the children some years ago  
11 (until he gave in to the wife's insistence that he stop), neither parent alleges that  
12 there was spanking or hitting in the head of any child by either parent, nor did the  
13 children report such forms of discipline to the parenting evaluator.

14 (70) When Mr. Cheng and the children returned to his parents' home on the 26th,  
15 Alex and Charlie told Ms. Cheng that they had gone to the hospital because Ms.  
16 Cheng had "slapped" Charlie. Ms. Cheng was shocked and instructed Alex not to  
17 "bear false witness." She asked Mr. Cheng how could he do this without consulting  
18 her and told him she wanted a divorce. She told Alex that she wouldn't see her until  
19 Alex was an adult. Ms. Cheng testified she believed the police would be involved  
20 and she was at risk of criminal charges for child abuse. Ms. Cheng felt it best for her  
21 to leave the house because she had resolved not to carry on arguments with Mr.  
22 Cheng in front of the children. Also, they were staying in the home of Mr. Cheng's  
23 parents, who would not allow her to stay there if Mr. Cheng left, and she was  
24 planning to fly out the next day to the Pia Melody workshop in Waco Texas that Mr.  
Cheng had signed her up for. Ms. Cheng stayed with the children for a couple of  
hours, reassuring them that she was going to return in a few days. She felt it would  
be easier on the children if they left before she did, so she buckled them into Mr.  
Cheng's car as they went off to dinner with him, and then she left the house. She  
stayed at a hotel for the night and flew to the Waco conference the next day.

(71) Throughout trial, counsel for Mr. Cheng continuously referred to Ms. Cheng's  
departure on July 26th as Ms. Cheng's "divorcing the family" or "separating" from  
the family. However, Mr. Cheng was aware she was attending the Waco conference  
and Ms. Cheng Skyped with the children while she was gone. The parties  
exchanged emails. Mr. Cheng received an email from her on July 29th, while she  
was at the conference. (Exhibit 149). She testified that she wrote in "therapy speak,"  
because she was trying to reach him in his own adopted language and show him  
she was trying to communicate on his terms. She wrote, "there is the feeling that I  
can't reach you with rational talk any more." She explained that she wanted to see  
the children "in between my trips." And she says, "I can't imagine being away from  
me for much longer is good for them, and am only away now b/c of the intensive  
[the Waco conference] and the auction dinner/remodel." Ms. Cheng returned to  
California from the Waco trip and found Mr. Cheng had locked her out of his  
parents' home and imposed supervised visitation in advance of any court filing.

1 (72) While Ms. Cheng was in Waco learning about Mr. Cheng's preferred form of  
2 therapy and attempting to keep lines of communication open, Mr. Cheng was  
3 moving forward with divorce plans. Without notice, he cut off her access to all the  
4 financial accounts and the joint Google calendars. All the texts between the parties  
5 from July 5 to July 31 disappeared. He took her American Express Card (which she  
6 had in her possession for years) days before she left for Waco.

7 (73) When Ms. Cheng returned from Waco to Encinitas on July 31 and attempted to  
8 rejoin the family at Mr. Cheng's parents' house, Mr. Cheng would not allow her to  
9 enter. He arranged a supervised visit between her and the children on August 1st.  
10 At 2:00 a.m. on August 2nd, Ms. Cheng went to his parents' home and begged Mr.  
11 Cheng not to move forward with a divorce, but he refused. Mr. Cheng filed his  
12 petition for dissolution on August 2nd, specifying the date of separation as August  
13 2nd (not July 26th).

14 (74) When Ms. Cheng realized Mr. Cheng had locked her out of his parents' home  
15 and refused her access to the children, she reached out to Sarah Bridge for help  
16 mediating the situation. On August 2, Mr. Cheng wrote to Ms. Bridge, "I will not  
17 agree to Julia having contact with the kids unless she tells everyone where she is  
18 staying." (Exhibit 311). Mr. Cheng admitted at trial he was using the children as a  
19 way of finding out where she was in order to serve her with the TRO. (Testimony of  
20 Victor Cheng, December 15).

21 (75) Despite Mr. Cheng's representation in his declaration of August 2, 2013 that he  
22 would be staying in California through August, Mr. Cheng took the children to his  
23 Uncle's home in Issaquah, Washington on August 4th, without notice to Ms. Cheng.  
24 Ms. Cheng wrote to him on August 4th, believing he and the girls were still in  
California, asking him to please take Alex and Charlie to an art/farm camp she had  
signed Alex up for in California. Mr. Cheng responded to her at 9:00 p.m. saying that  
he had taken the girls to the Seattle area. He refused to let her know the address  
where they were staying until the following day. (Exhibit 232A).

(76) After Ms. Cheng arrived at Bainbridge Island and was staying with friends, Mr.  
Cheng continued to offer supervised visitation only. He had his mother serve Ms.  
Cheng with the petition and TRO in front of the children during a supervised  
visitation. Mr. Cheng testified that in retrospect, it was a bad idea.

(77) Mr. Cheng supported supervised visitation until the court ordered it lifted in late  
November 2013. Mr. Cheng told the parenting evaluator that he believed supervised  
visitation was still necessary, that Ms. Cheng had unresolved rage issues, that her  
"traumatic childhood" influenced her way of parenting, and that he should have sole  
decision making based on .191 restrictions due to Ms. Cheng's "lack of stability."  
(Exhibit 2, p.16). Ms. Wakenshaw reported, "Mr. Cheng said it was extremely hard  
on Alex and all the girls when their mother left for an extended period of time in July  
2013 with sporadic visitation into August 2013. Things are now better as Alex sees  
her mother every day." *Id.* at p.17. Mr. Cheng's attempt to portray Ms. Cheng as

1 abandoning the family on July 26th was contradicted at trial, where he ultimately  
2 acknowledged that he knew she went to the Waco conference on July 27 and that  
3 Ms. Cheng had attempted to rejoin the family upon her return and tried to convince  
4 him not to file for divorce.

5 (78) Ms. Wakenshaw noted in her interim report that "Ms. Cheng has concerns  
6 about the children's current functioning due to the parental separation. She and Mr.  
7 Cheng had a meeting with Alex's teacher. Alex's teacher reported that Alex is  
8 having some trouble concentrating." *Id.* at p.9. The evaluator's second report stated,  
9 "Based on the recommendation of the school, Alex has no homework now as she  
10 adjusts to the parents' divorce." (Exhibit 3, p.12). Ms. Wakenshaw reported in  
11 February 2014, "The current parenting plan that has been in place since December  
12 2013 is a 3-3-4-4 [50/50] plan and the children are reportedly faring better under this  
13 plan than they were during supervised visitation." *Id.* at p.48. Lizbeth Doving, a local  
14 friend of the family, testified that she and her daughter had several playdates with  
15 Ms. Cheng and the girls under supervised visitation, with Mr. Cheng's babysitter  
16 present to keep watch over everybody. She said it was very uncomfortable and  
17 made playtime awkward. She said things improved enormously when supervised  
18 visitation was lifted and Ms. Cheng's time with the girls became more normalized.

19 (79) Mr. Cheng testified he believes a permanent 50/50 residential schedule is in the  
20 best interests of the children because the children are currently doing fine. His  
21 attorney elicited testimony from many witnesses that the children appear to be doing  
22 well. This court finds, however, that the children would be doing even better if they  
23 hadn't been separated from their mother under such traumatic conditions. Alex  
24 would be in a better position, academically, if Ms. Cheng had been allowed to make  
educational decisions for her. Further, the children may not have required  
counseling for the same length of time, if at all.

(80) Counsel for Mr. Cheng argued that "any parent" would have done what Mr.  
Cheng did (took the children to an emergency room, alleged the mother was  
abusive, obtained a restraining order and supervised visitation for four months)  
faced with a child's representation that her mother had hit her in the head. Mr.  
Cheng's credibility is questionable, based on the evidence, his demeanor and  
testimony, and the lack of witnesses to testify regarding his parenting. He  
contradicted his own testimony a number of times and he was contradicted by the  
witnesses he called. Ms. Cheng, on the other hand, was credible. Her testimony  
was supported by the record and by the testimony of many witnesses. The court  
finds that Mr. Cheng's actions at the outset of the case were detrimental to the  
children.

(81) At this time, Mr. Cheng does not call into question Ms. Cheng's fitness for  
parenting up to 50% of the time. Even though he began the case with drastic  
accusations of out of control raging and anger management issues, he admitted in  
his declaration of August 2, 2013, "she has been a stellar mom in many facets of  
motherhood (nutrition/allergy management, clothing, education options)." He now

1 denies any emotional issues for Ms. Cheng, so long as she is not overly stressed.  
2 Mr. Cheng testified "she is an amazing mom when she is not stressed out," and  
3 "Julia is a phenomenal mother when she has a good day." He argues that with a  
4 50/50 schedule she won't be stressed out and the children will "get the absolute  
5 best of her." Ms. Cheng testified that whatever stresses she endured in the spring of  
6 2013 were caused by Mr. Cheng, not by the children. Under cross-examination, she  
7 stated the children are not a "source of stress" for her; rather, they are her greatest  
8 joy. Ms. Cheng testified that with the troubled marriage behind her, she looks  
9 forward to life as a single working mom.

6 (82) The psychological testing and reports issued by Dr. Bruce Olson and Dr.  
7 Richard Adler contradict Mr. Cheng's opinion that Ms. Cheng is likely to be  
8 excessively stressed if she has more than 50% residential time. Similarly, their  
9 findings support Ms. Cheng's testimony that Mr. Cheng was the source of her stress  
10 pre-separation.

9 (83) Dr. Olson recounted instances in which Mr. Cheng lacked insight into the  
10 effects of his behavior on his family. Dr. Olson noted Mr. Cheng's lack of sensitivity  
11 to the effect of his chosen career on his wife and children, which he admitted was  
12 "incredibly stressful, chaotic, lots of financial stress." (Exhibit 8, p.5) Mr. Cheng told  
13 Dr. Olson, "This is just what I want to do with my life." (*Id.*) Dr. Olson testified he was  
14 taken aback by that statement, given Mr. Cheng's avowed desire to be an involved  
15 parent. Dr. Olson expressed concern that Mr. Cheng is "still very, very much  
16 enamored with the idea of success. And my concern was that it might be at any  
17 cost; that certainly he had a great need to achieve; that he didn't really regret  
18 pursuing this entrepreneurship, even if it caused damage to his wife and kids. And  
19 that was concerning to me; that he didn't seem to have insight; that that may not  
20 have been a cost that might not be worth paying." (Testimony of Dr. Bruce Olson,  
21 December 3, 2014). Dr. Olson testified that this attitude is consistent with  
22 narcissism.

16 (84) Dr. Olson reported that "Mr. Cheng appeared egocentric and self-focused, to  
17 lack insight into the impact of his own behavior on other people (despite his history  
18 of therapy) and to be inclined to blame others [primarily parents and wife] for his  
19 present situation. He may very well have had an empty and inadequate childhood. It  
20 is probable, however, that his behavior has significantly negatively impacted his wife  
21 (as it negatively impacted and affected her sister). He has not fully taken  
22 responsibility for his destructive impact on his wife, but [has] admitted to the  
23 inappropriate behavior with her sister (although, similarly one does not perceive that  
24 he is truly empathetic or fully appreciates the effect of his behavior)." (Exhibit 8,  
p.25-26). Dr. Olson recommended therapy targeting his narcissistic traits and a  
course of anger management, "with particular attention to empathy."

(85) Dr. Olson also recommended that Mr. Cheng "receive specific attention to work  
in the area of interpersonal boundaries (due to his boundary crossing in

1 interpersonal relationships). This is an area of particular concern, given the fact that  
2 he has three female children."

3 (86) The parenting evaluator, Martha Wakenshaw, published a third report on July  
4 2, 2014. (Exhibit 4). Ms. Wakenshaw reported that she "interviewed Mr. Cheng's  
5 therapists and parenting coach and none of these professionals find him to have  
6 issues with 'interpersonal boundaries.' On the contrary, Mr. Cheng is uniformly  
7 described as having excellent interpersonal boundaries and most importantly holds  
8 these boundaries with the children." *Id.* at p.2. Ms. Wakenshaw reported that Mr.  
9 Cheng's therapist, Dan Pippinger, "does not think that any treatment is necessary  
10 from a mental health perspective." *Id.* at p.7. Ms. Wakenshaw reported that Mr.  
11 Cheng's psychologist, Dr. Phil Brown, found Mr. Cheng to have "excellent  
12 interpersonal boundaries," and has "no concerns about Victor's boundaries as they  
13 relate to the children." *Id.* at p.8. She also reported, "Dr. Brown does not find Victor  
14 to be at all narcissistic."

15 (87) Dr. Olson testified that if a current therapist of Mr. Cheng's were to pronounce  
16 him free of narcissistic traits, that would be concerning to Dr. Olson, who stated, "I  
17 would wonder about that person's ability to objectively analyze his personality...I  
18 would really question that person's clinical evaluative ability." (Testimony of Dec. 10,  
19 2014). He also testified that if a therapist said he or she saw no interpersonal  
20 boundary issues with Mr. Cheng and found no need to provide treatment for that,  
21 Dr. Olson would "assume he didn't know about this incident [Mr. Cheng's unwanted  
22 sexual advances toward Ms. Cheng's sister] or that he's just simply disregarding it  
23 as somehow insignificant, which I don't know that you could justify." *Id.*

24 (88) Dr. Olson testified, "The best predictor of future behavior is past behavior. If  
someone has crossed a boundary at some point in their life, they are at higher risk  
of doing that again; certainly absent effective intervention...This is something that I  
think should be addressed to provide the maximum amount of safety for these kids."  
*Id.*

(89) Mr. Cheng's case against Ms. Cheng's parenting focused on a few incidents in  
the spring and summer of 2013 in which he claimed Ms. Cheng's behavior toward  
him or the children was extreme or abusive. He described an incident on Father's  
Day, June 16, 2013, in which the father and children came home to a locked house  
and Ms. Cheng had thrown trash from one of the cars on the driveway and  
demanded it all be picked up before she would let them back in the house. Ms.  
Cheng acknowledged this was a lapse in judgment and she has worked with her  
therapist to consider more constructive ways she might have handled the situation.

(90) There was another day in June 2013 where the parties were arguing and Ms.  
Cheng texted Mr. Cheng that she would not be attending Charlie's piano recital. She  
testified she attended the recital, but stayed away for one night to diffuse the  
argument.

1 (91) Ms. Cheng explained these events in the context of the disintegration of the  
2 marriage. In the spring of 2013 Mr. Cheng was traveling frequently for seminars and  
3 work. Ms. Cheng testified that she and the children had been ill for weeks with  
4 walking pneumonia. She had just borne the brunt of responsibility for moving the  
5 family from one rental house to another, while working continuously on the  
6 remodeling of their home. Mr. Cheng was acting out emotionally on a frequent  
7 basis, due to his intensive therapy and their ongoing arguments about money. Ms.  
8 Cheng testified that in April Mr. Cheng overturned a heavy dining room table on her  
9 in anger. Mr. Cheng's testimony about that incident contradicted his prior  
10 explanation to Ms. Wakenshaw and was not credible. The court finds Ms. Cheng's  
11 account of the incident is credible and it is concerning that, during the spring and  
12 summer of 2013, while Mr. Cheng was experiencing significant emotional upheaval  
13 and writing emails describing his rages and uncontrollable crying, and the marriage  
14 was breaking down, he resorted to physical violence against Ms. Cheng.

15 (92) The most significant event upon which Mr. Cheng focuses was Ms. Cheng's  
16 behavior when he returned with the children from visiting the emergency room on  
17 July 26th and the children said she had slapped Charlie the day before. Having  
18 heard the testimony of both parties, the court finds that Ms. Cheng's behavior was  
19 understandable in context. She was shocked, but she did not lose control. She  
20 comforted the children and took the best course of action she could think of under  
21 the circumstances. Contrary to Mr. Cheng's assertions, she maintained contact over  
22 the following days until she returned from the Waco conference. Mr. Cheng at that  
23 point locked her out and withheld the children.

24 (93) This Court finds that Mr. Cheng's representations about Ms. Cheng "raging" or  
otherwise abusing the children are unsupported by the record. Rather, the evidence  
shows Mr. Cheng to be the one who was unable to control his temper and took it out  
on the children. Specifically, Mr. Cheng once duct taped Danny to her high chair,  
including her arms, and on at least one other occasion drove and abruptly broke  
his car when the children were inside and not wearing their seatbelts, causing them  
to be thrown forward and sustaining minor injuries—just to teach them a lesson.

(94) The court finds Ms. Cheng's version of events occurring on July 25, 2013 was  
more credible than Mr. Cheng's. Mr. Cheng was not in the home during Charlie's  
tantrum. There were no witnesses to the naptime incident besides 6-year-old  
Charlie, 3-year-old Danny and Ms. Cheng. Ms. Cheng has no history of abuse of  
anyone before or after that day. Ms. Cheng has no history of raging or anger issues.  
Ms. Cheng's testimony regarding the family dinner at the restaurant and the children  
playing happily and loudly all evening is credible.

(95) The court finds it is not credible that Mr. Cheng was aware the children were  
agitated and had something important to tell him, but then he went to take a shower  
in the middle of the bedtime routine, then heard from the children that Ms. Cheng hit  
Charlie in the head, and then failed to discuss the matter with Ms. Cheng.

1 (96) The court finds it is not credible that Mr. Cheng had a legitimate concern about  
2 Charlie needing emergency room attention the day after the alleged incident, when  
even he testified that Charlie appeared injury-free and was playing normally.

3 (97) The court finds Mr. Cheng misrepresented to the emergency room social  
4 worker on July 26, 2013 and later to the court in his August 2, 2013 declaration that  
Ms. Cheng attended two anger management workshops in July 2013.

5 (98) The court finds Mr. Cheng put the children in the center of the litigation and  
unnecessarily imposed supervised visitation on them and their mother.

6 (99) The court also finds that Mr. Cheng exercised poor judgment in bringing his  
7 mother with him from California to serve as a babysitter to the children. The  
8 parenting evaluator wrote, "The children have reported that they spend what they  
9 consider to be too much time with the paternal grandmother. They express boredom  
10 and dislike of spending time with her. The father by his own admission, historically  
had issues with his mother, but said he does not have these issues with her any  
longer." (Exhibit 3, pp.49-50). Ms. Wakenshaw reported that Alex stated she doesn't  
see her father as much as she sees her grandmother. *Id.* at p.19.

11 (100) Dr. Olson's report addresses Mr. Cheng's complaints about the abuse he  
12 suffered at the hands of his mother as a child and the lasting damage it caused him.  
13 "Mr. Cheng acknowledged that he does feel that he grew up in an abusive  
14 environment and was emotionally neglected as a child by his parents. He  
15 acknowledged that he has described his mother as a 'narcissist....'" (Exhibit 8, p. 3).  
16 "He acknowledged that he has struggled with angry feelings about his childhood and  
17 entered therapy to deal with what he viewed as 'impaired relationships with his  
18 children' (due to his own childhood)." *Id.* "He indicated that he has associated  
19 himself with being a 'bad person,' based on his mother's 'shaming' behavior." *Id.* at  
20 p. 4. "Mr. Cheng referred to emotional abuse in his childhood. ...in his mother's  
case, he described himself as being considered a 'defective child.' "He describes  
[his mother] as 'absent,' 'thoughtless,' 'superficial,' 'closed,' 'controlling,' and  
21 'spanked,' 'hit and slapped him,' and was 'critical guilt and shame inducing,' 'cold,'  
22 'distant and unavailable,' 'esteem diminishing,' 'self-centered and indulgent' and  
'difficult to confide in.'" *Id.* at p.12. "He describes her as a 'bull in a china shop,'  
23 'opinionated,' 'not respectful of boundaries,' and reported that she has mellowed  
only because he has 'pushed back.'" *Id.* at p.13. Mr. Cheng stated, "[Ms. Cheng]  
24 wanted to have approval from my mother. My mom didn't approve of our marriage.  
Julia's family was not 'pedigreed' enough...." *Id.* at p. 9.

(101) Dr. Olson interviewed Sarah Bridge, who met with Mr. and Ms. Cheng in July  
2013. "[Ms. Bridge] talked about how 'uncomfortable he was with his mother,' and  
that he 'couldn't stand to be in the same room' with her." *Id.* at p. 21.

(102) Dr. Olson interviewed Michelle Piper, Mr. Cheng's life coach. He reported,  
"When asked what she thought about his mother moving up to be with him (given

1 the estranged relationship with his mother), she stated, 'It really seems odd. I don't  
2 like that.'" *Id.* at p. 24.

3 (103) Dr. Olson's conclusion states, "He has reported that he had a dysfunctional  
4 childhood and was traumatized by his parents' behavior." *Id.* at p. 25.

5 (104) WAC 246-924-445(2)(b) provides that a psychologist conducting a parenting  
6 evaluation may consider the children's relationship with significant adults. In this  
7 case, Dr. Olson is a psychologist, but his role was not to conduct the parenting  
8 evaluation and so he did not interview Mr. Cheng's mother. Ms. Wakenshaw  
9 acknowledged she should have interviewed Mr. Cheng's mother. Ms. Wakenshaw  
10 testified that she chooses to believe Mr. Cheng's impression over that of the  
11 children regarding how much time they spend with her.

12 (105) Mr. Cheng testified that the negative comments he made about his mother  
13 only relate to his impressions as a child; however, the record does not support that  
14 explanation. The descriptions quoted by Dr. Olson are in the present tense. Also,  
15 Mr. Cheng wrote in March 2013, "I keep my parents at arms length distance  
16 (actually airplane ride distances) away in part so they can not do any more damage  
17 to me. I use that distance as a buffer and perhaps as I build a stronger emotional  
18 resilience, I can close that gap a little in the future." (Exhibit 293).

19 (106) Mr. Cheng's testimony that his mother is an appropriate caregiver is not  
20 credible, nor is his testimony that she watches the children only four hours a month.  
21 His testimony was contradicted by his own witness, Joanie Klorer and also by the  
22 children's comments to the parenting evaluator.

23 (107) The court finds Ms. Cheng is the parent who more reliably exercises  
24 appropriate judgment regarding the children's welfare.

**RCW 26.09.004(2)(f): Providing for the financial support of the child.**

(108) The parties practiced traditional role models in the home. The mother was the  
stay-at-home parent and the father was the breadwinner. Post-separation, the  
mother will seek employment and the father will continue to provide financial  
support. The court finds that both parents contributed to the financial support of the  
children and will continue to do so.

(109) Based on the evidence, the court finds that the mother shows the greatest  
potential for future performance of parenting functions under RCW 26.09.004(2).

**RCW 26.09.187(3)(a)(iv) The emotional needs and developmental level of the child.**

(110) The court finds that the mother is the parent who primarily meets the emotional  
needs and understands the developmental level of the children.

1 **RCW 26.09.187(3)(a)(v) The child's relationship with siblings and with other**  
2 **significant adults, as well as the child's involvement with his or her physical**  
3 **surroundings, school, or other significant activities.**

4 (111) The court finds that the mother is the parent who primarily assists the children in  
5 relationships with siblings and with other significant adults, as well as the children's  
6 involvement with their physical surroundings, school, or other significant activities.

7 **RCW 26.09.187(3)(a)(vi) The wishes of the parents and the wishes of a child who is**  
8 **sufficiently mature to express reasoned and independent preferences as to his or**  
9 **her residential schedule.**

10 (112) The parents disagree about the future parenting schedule. The children have  
11 expressed a desire to see their mother more than the current 50/50 schedule.

12 (113) Mr. Cheng seeks a 50/50 residential schedule. His reasoning is that the children  
13 are used to it and are doing well.

14 (114) Ms. Cheng seeks a schedule allowing the children to reside in her home the  
15 majority of residential time, with substantial time spent in Mr. Cheng's home. Her  
16 proposed parenting schedule would have the children spend most school nights at her  
17 residence while still providing the children with over 35% of overnights with the father.

18 (115) The mother testified the children need a stable home life and will thrive better if  
19 they can have a home with the most qualified caregiver. She stated she is the more  
20 nurturing parent and the children would benefit from more time with her for that reason.  
21 Ms. Cheng also testified that Alex's special educational needs would be best served by  
22 homeschooling, supplemented with courses at Island Educational Services. Since Ms.  
23 Cheng has historically been the parent in charge of educational research and  
24 implementing homeschooling when necessary in the past, she believes it will be in Alex's  
best interest to have more residential time with her to implement her schooling.

(116) The parenting evaluator, Ms. Wakenshaw, testified that, in November 2014, three  
weeks before trial, she interviewed Alex's therapist, Patricia Erskine. Ms. Erskine  
reported that Alex (age 11) informed her she wants more time with her mother and her  
sisters do too.

(117) Ms. Wakenshaw's report of February 28, 2014 states Alex asked her for "five days  
with mom and two days with dad." (Exhibit 3, p.20).

(118) Alex reported to Ms. Wakenshaw that she wished her mother lived in the family  
home because her mother would have a garden and animals there and would let the  
children put their artwork up. The evaluator wrote, "She appeared to be disappointed that  
this would now not be able to happen." *Id.* at p.19.

1 (119) Jenne Louie, the children's maternal aunt reported to Ms. Wakenshaw, "Alex is  
2 having the hardest time and is very moody and wants to live with mom." *Id.* at p.25.

3 (120) The court finds Alex, age 11, is sufficiently mature to express reasoned and  
4 independent preferences and there is no basis to deny her preference.

5 **RCW 26.09.187(3)(a) (vii) Each parent's employment schedule, and shall make  
6 accommodations consistent with those schedules.**

7 (121) The father testified he has a somewhat flexible employment schedule, and he has  
8 hired numerous babysitters and drivers and has relied on his mother to fill in where  
9 needed.

10 (122) The mother to date has been a stay-at-home-mother. She is training for a career  
11 that will allow her considerable flexibility, and she anticipates being present with the  
12 children during her residential time and being available to homeschool as needed.

13 (123) The court finds both parents' employment schedules enable them sufficient  
14 flexibility to accommodate their residential time with the children, but that the mother has  
15 shown more commitment to personally provide parenting time with the children.

16 (124) Based on the statutory factors above, the court finds it is in the best interests of the  
17 children to adopt the mother's proposed parenting plan.

## 18 **2.20 Child Support**

19 There are children in need of support and that support should exceed the maximum level  
20 provided in the Washington State Child Support Schedule, due to the lifestyle that has  
21 been enjoyed by the children during the marriage of the parties. Both parents provided  
22 financial declarations indicating extraordinary expenditures on the children. (Exhibits 22  
23 and 402). Ms. Cheng testified at length about the children's expenses, including private  
24 school tuition and special needs expenses for Alex. (Exhibit 403). The children have  
experienced a lifestyle that includes frequent meals at expensive restaurants, an organic  
diet that is financially beyond the scope of the average household, and expensive  
vacations, clothing, education, lessons and activities.

## 25 **2.21 Other**

### 26 **III. Conclusions of Law**

27 The court makes the following conclusions of law from the foregoing findings of fact:

#### 28 **3.1 Jurisdiction**

29 The court has jurisdiction to enter a decree in this matter.

1 **3.2 Granting a Decree**

2 The parties should be granted a decree.

3 **3.3 Pregnancy**

4 Does not apply, the wife is not pregnant.

5 **3.4 Disposition**

6 The court should determine the marital status of the parties, make provision for a  
7 parenting plan for any minor children of the marriage, make provision for the  
8 support of any minor child of the marriage entitled to support, consider or approve  
9 provision for the maintenance of either spouse, make provision for the disposition  
10 of property and liabilities of the parties, make provision for the allocation of the  
11 children as federal tax exemptions, make provision for any necessary continuing  
12 restraining orders, and make provision for the change of name of any party. The  
13 distribution of property and liabilities as set forth in the decree is fair and equitable.

14 **Maintenance:**

15 (1) The non-exclusive statutory factors of RCW 26.09.090 were considered by the  
16 court and are reflecting in the findings of fact.

17 (2) Post-dissolution economic circumstances are the paramount consideration in  
18 awarding maintenance. *In re Marriage of Williams*, 84 Wn. App. 263, 927 P.2d  
19 679 (1996), *review denied*, 131 Wn.2d 1025 (1997). The post-dissolution  
20 circumstances in this case are that a) Mr. Cheng's income is approximately  
21 \$1,000,000 per year. b) Ms. Cheng is unlikely to exceed \$100,000 per year  
22 income and c) the parties have very little by way of assets other than the  
23 husband's business. During the marriage both the parties' savings and Ms.  
24 Cheng's career opportunities were devoted to boosting Mr. Cheng's career and  
business.

(3) The wife's capacity for future earnings makes self-support likely. However,  
"...under the extremely flexible provisions of RCW 26.09.090, a demonstrated  
capacity of self-support does not automatically preclude an award of  
maintenance. Indeed, the ability of the spouse seeking maintenance to meet  
his or her needs independently is only one factor to be considered." *In re  
Marriage of Washburn*, 101 Wn.2d 168, 178-79, 677 P.2d 152 (1984).

(4) The wife is entitled to more than a subsistence amount of maintenance. For  
example, she needs to create a retirement fund in a small amount of time.  
"[T]he court is not limited to assessing a minimum amount of maintenance to  
pay monthly expenses. It may also consider the standard of living attained  
during the marriage, the ability of one spouse to pay additional maintenance,

1 and the other's ability to provide for himself or herself." *In re Marriage of*  
 2 *Barnett*, 63 Wn. App. 385 (1991); RCW 26.09.090.

- 3 (5) The husband's argument that the award of the business and the award of  
 4 maintenance is double-dipping is unsupported. "In the case of goodwill, it has  
 5 been held elsewhere that the valuation of an asset on the basis of its past  
 6 earnings and the establishment of an award of maintenance or child support  
 7 based upon those earnings is not double dipping. The basis of this holding is  
 8 that goodwill is not synonymous with future earnings, *In re Marriage of Lukens*,  
 9 16 Wn. App. 481, 486-87, 558 P.2d 279 (1976), in that goodwill reflects the  
 10 past and not necessarily the future earnings of the asset. *In re Marriage of*  
 11 *Bookout*, 833 P.2d 800, 18 FLR 1129 (Colo.App.1991)." Kenneth W. Weber, 20  
 12 *Washington Practice, Family and Community Property Law*, § 34.9 (2009).

8 **Child support:**

- 9 (1) The *Daubert /Rusch* factors were considered above in setting child support  
 10 above the economic table, including the standard of living of each parent, and  
 11 special medical, educational, or financial needs of the children. "The trial court  
 12 in *Daubert* [at p. 497] recognized that orthodontia, summer camp, college test  
 13 preparation classes, computers, and travel for extracurricular activities or  
 14 cultural experiences are within the appropriate bases for additional support  
 15 under RCW 26.19.080." *In re the Marriage of Krieger*, 147 Wn. App. 952, 961,  
 16 199 P.3d 450 (2008).
- 17 (2) The court is not limited to extraordinary need to set support in excess of the  
 18 economic table. "By asserting that extraordinary need must exist before the  
 19 court could set an award above the advisory amount, the court impermissibly  
 20 narrowed the scope of needs and expenses that can support such an award....  
 21 Neither the statute nor the case law limits support awards above the advisory  
 22 amount to those based on 'extraordinary' needs, as the trial court here applied  
 23 that term. The statute provides only that the court has discretion to award an  
 24 amount above the advisory amount 'upon written findings,' and the case law  
 requires only that the additional support be necessary and reasonable, in light  
 of the parents' financial circumstances. *McCausland* recognized that, at a  
 minimum, the trial court should consider the children's 'special medical,  
 educational, or financial needs,' but specifically noted that the determination  
 was not limited to these factors. And in our first opinion on remand to the trial  
 court, we 'emphasize[d] that the trial court retains discretion to set child support  
 above the advisory amounts upon entry of sufficient findings.' We did not  
 define 'sufficient findings' nor did we narrow the range of expenses that could  
 support such an award. In fact, in *Daubert*, the court recognized that expenses  
 for school-related costs and trips, extra-curricular activities, cultural  
 experiences, and computers were appropriate bases for additional support." *In*  
*re the Marriage of Krieger*, 147 Wn. App. 952, 961, 99 P.3d 450 (Div. 1, 2008).

(3) It is appropriate to equally divide the dependency exemptions for the children, so long as both parents can realize a benefit from exemptions. If not, the exemptions should go to the parent who would benefit.

(4) It is anticipated that the children will have the need and the parents the ability to contribute to post-secondary education. Determination of the amount each parent should contribute should be reserved for determination closer to the time each child graduates from high school.

**Parenting Plan**

The court has considered the factors in RCW 26.09.187(3)(a). In parenting decisions, the parents' interests are subsidiary to the children's interests. "While courts also should encourage the involvement of both parents, this is a secondary goal and courts should never sacrifice the best interests of the child to allow both parents to be involved." *In re Parentage of Schroeder*, 106 Wn. App 343, 349, 22 P.3d 1280 (2001). While the parent's proposed parenting plans differ by only one day per week, the configuration proposed by the mother best serves the interests of the children.

**3.5 Restraining Order**

Does not apply.

**3.6 Protection Order**

Does not apply.

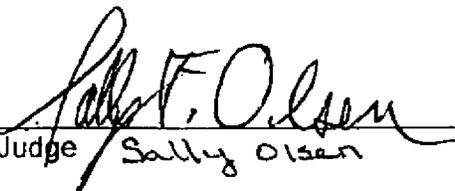
**3.7 Attorney's Fees and Costs**

The husband's actions at the outset of the case in making allegations of abuse against the mother caused excessive expense throughout the case for repeated trips to court and multiple evaluations. These allegations were misleading and recalcitrant. The husband should contribute to the wife's legal fees and costs in an amount to be determined by post-trial hearing without oral argument.

**3.8 Other**

Does not apply.

Date: May 8, 2015

  
Judge Sally Olsen

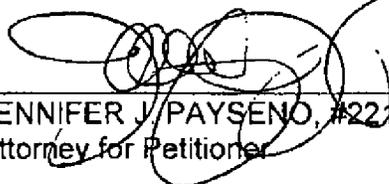
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MARK L. YELISH, #9517  
Attorney for Respondent

  
JENNIFER J. PAYSENO, #22153  
Attorney for Petitioner

Hon. Sally F. Olsen

RECEIVED AND FILED  
IN OPEN COURT

MAY 08 2015

DAVID W. PETERSON  
KITSAP COUNTY CLERK

WSSR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KITSAP

In re Marriage of:

VICTOR K. CHENG,

No. 13-3-00959-1

Petitioner,

DECREE OF DISSOLUTION (DCD)

and

Clerk's action required

JULIA A. CHENG,

Respondent

I. JUDGMENT/ORDER SUMMARIES

1.1 Restraining Order Summary:

Does not apply.

1.2 Real Property Judgment Summary:

A. The real property commonly known as 4672 Rockaway Beach Rd NE, Bainbridge Island, Washington, 98110 [Legal description: Lot 9 and the N Half of Lot 10, First Addn. to Blakely Beach Vol. 7, pg. 51; Assessor's Parcel #4138-000-009-0107] is awarded to the Wife, Respondent Julia Cheng.

1.3 Money Judgment Summary: 15.9-00789-8

Judgment summary is set forth below.

- A. Judgment Creditor
- B. Judgment Debtor
- C. Principal judgment amount
- D. Interest to date of Judgment
- E. Attorney fees

JULIA A. CHENG  
 VICTOR K. CHENG  
 \$1,455,154  
 N/A  
 Reserved Pending Hearing

1912

- 1 F. Costs N/A
- 2 G. Other recovery amount N/A
- 3 H. Principal judgment shall bear interest at 6% per annum.
- 4 I. Attorney's fees, costs and other recovery amounts shall bear interest at 6% per annum.
- 5 J. Attorney for Judgment Creditor Mark L. Yelish
- 6 K. Attorney for Judgment Debtor Jennifer J. Payseno
- 7 L. Other: see Marital Lien described below.

**END OF SUMMARIES**

**II. Basis**

Findings of Fact and Conclusions of Law have been entered in this case.

**III. Decree**

**It Is Decreed that:**

**3.1 Status Of The Marriage**

The marriage of the parties is dissolved.

**3.2 Property To Be Awarded To The Husband**

A. The husband is awarded as his separate property the property the property allocated to him as set forth in **Exhibit 1**. This exhibit is attached and incorporated by reference as part of this Decree.

B. The Husband is awarded 100% of all right, title, interest and control that the community may have in and to the businesses known as Fast Forward Media, Inc. and CaseInterview.com, as well as all affiliated companies, DBAs, subsidiaries or internet domains, and to all the assets thereof, including but not limited to personal property, intangible property, bank accounts, accounts receivable, work in progress, patents and intellectual property held by or related to the business, tools and equipment, liens, securities, rights to legal action, and any past, present or future equity, shares or membership interests. Except as otherwise specified in this agreement, the Husband is also assigned 100% of all debts, obligations, liens, taxes, or any other claims, foreseen or unforeseen, for which the community, the Husband or the Wife is or may become liable to, by or on account of the businesses and shall hold the Wife harmless thereon. The Wife shall forthwith execute any resignations from any positions held in the businesses tendered by the Husband. The Wife agrees to cooperate in the execution of any future documents required to evidence her release of interest.

1 **3.3 Property To Be Awarded To The Wife**

- 2 C. The Wife is awarded all property allocated to her as set forth in **Exhibit 1**
- 3 D. The Wife is awarded all right, title and interest in and to the real property  
4 commonly known as 4672 Rockaway Beach Rd NE, Bainbridge Island,  
5 Washington, 98110 (hereinafter: "the marital residence;" legal description: Lot 9  
6 and the N Half of Lot 10, First Addn. to Blakely Beach Vol. 7, pg. 51; Assessor's  
Parcel #4138-000-009-0107), together with any reserve or escrow accounts  
thereon, crystal chandelier, antique mantelpiece, clothes washer and dryer,  
refrigerator, oven, dishwasher, and all fixtures.
- 7 E. The Wife is awarded all homeschool materials and books and the Husband shall  
leave them in the family home.
- 8 F. The Wife is awarded all children's furniture (including all Young Stanley white  
9 children's furniture: two twin bedframes, one trundle frame, accessories for  
10 making the two into a bunk bed, two white night tables, one large five-drawer  
11 dresser) and all the children's personal effects, clothing, toys, books, equipment,  
etc., acquired prior to separation and the Husband shall leave them in the family  
home.
- 12 G. The Husband shall forthwith convey all right, title and interest in and to the marital  
residence to the Wife by appropriate quitclaim deed and real estate excise tax  
13 affidavits tendered by the Wife.
- 14 H. No later than fifteen (15) days after entry of this Decree, the Husband shall  
provide the Wife with a complete copy of the most recent mortgage statement on  
15 the marital residence.
- 16 I. No later than sixty (60) days after entry of this Decree, the Husband shall vacate  
the marital residence. Up to the date of vacating, the Husband shall assume all  
17 liabilities associated with the residence, including all property taxes, utilities, and  
mortgage payments. The Wife shall assume liability for utilities, property taxes and  
18 monthly mortgage payments incurred after Husband vacates the residence.
- 19 J. On or before the day he vacates the marital residence, the Husband shall provide  
Wife with all keys for access to all areas of the residence and he shall retain none,  
20 nor will he allow any of his agents or anyone else to retain any keys to the  
residence, but will deliver them all to the Wife. Before he vacates the residence,  
21 Husband shall also provide the wife with all the original manuals for all electronic  
locks and all the passwords/entry codes and garage door opening devices.
- 22 K. No later than thirty (30) days of entry of this Decree, Husband shall provide Wife  
with complete documentation of the tax basis in the marital residence, including  
23 without limitation copies of all receipts and invoices for all remodeling work,  
improvements and upgrades to the residence from the time of the purchase of the  
24

residence to the present, including without limitation receipts related to the following:

1. Tom Whealdon
2. Seri Yeckel
3. Tom and Todd Cain
4. Kingston Electric, Sunset Electric, and all electric vendors
5. EMF radiation expert in California
6. CAT-6 wiring contractor
7. All fixture receipts and any receipts given to the Husband by the general contractors (Whealdon, Cain)
8. Any updates to the residence since July 2013, such as the new backup generator, etc., that would be considered upgrades for tax purposes.

**3.4 Liabilities To Be Paid By The Husband**

The husband shall pay all liabilities allocated to him as set forth in Exhibit 1.

**3.5 Liabilities To Be Paid By The Wife**

The wife shall pay all liabilities allocated to her as set forth in Exhibit 1.

**3.6 Hold Harmless Provision**

Each party shall indemnify, defend and hold the other absolutely harmless from any expense, loss, claim or liability whatsoever arising from, or in any way connected with, separate or community debts assigned to them by this decree and its incorporated documents, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

**3.7 Maintenance**

The Husband shall pay to the Wife for the Wife's support and maintenance the sum of

\$20,000/month until December 2015 – beginning May 1, 2015

\$15,000/month until December 2016

\$15,000/month until December 2017

\$10,000/month until December 2018

Each payment shall be due on the 1st day of each month following entry of this Decree and continuing for ~~48~~ months via an electronic funds transfer to an account designated by the Wife. Said maintenance is taxable to the Wife and deductible by the Husband. Maintenance shall terminate upon the death or remarriage of the Wife. The

*JTB*  
*AFO*

1 maintenance obligation of the Obligor shall not be terminated by the Obligor's death  
2 and shall become a claim and lien upon the Obligor's estate.

3 **3.8 Continuing Restraining Order**

4 Does not apply.

5 **3.9 Protection Order**

6 Does not apply.

7 **3.10 Jurisdiction Over The Children**

8 The court has jurisdiction over the children as set forth in the Findings of Fact and  
9 Conclusions of Law.

10 **3.11 Parenting Plan**

11 The parties shall comply with the Parenting Plan signed by the court on this day. The  
12 Parenting Plan is approved and incorporated as part of this Decree.

13 **3.12 Child Support**

14 Child support shall be paid in accordance with the Order of Child Support signed by  
15 the court contemporaneously herewith. This order is incorporated as part of this  
16 Decree.

17 Attorney's fees, other professional fees and costs shall be reserved pending hearing.

18 **3.13 Name Changes**

19 The wife's name shall be changed to Julia A. Sun.

20 **3.14 Other:**

21 A. Each party shall promptly execute any and all documents necessary to effectuate  
22 this Decree. Any party who fails or refuses to timely execute such documents shall  
23 be responsible for attorney's fees and costs incurred by the other party as a result  
24 of such failure or refusal.

B. Each party is awarded their clothing, jewelry and personal effects.

C. Within 30 days of entry of this Decree the Husband shall transfer title of the 2002  
Honda Odyssey LX (license AAR8416) to the Wife.

D. Within 30 days of entry of this Decree the Wife shall transfer title of the 2001  
Subaru Outback to the Husband.

- 1 E. Within 30 days of entry of this Decree the Husband shall transfer ownership of  
2 50% of any and all airline mile to the Wife existing as of August 2, 2013.
- 3 F. Within 30 days of entry of this Decree the Husband shall deliver to the Wife the  
4 Canon 5D Mark II digital SLR, with 24-70MM lens and bounce flash and the  
5 manual and accessories. The Husband is awarded the other Canon digital SLR  
6 and photography equipment.
- 7 G. The parties shall equitably divide personal property not otherwise mentioned in  
8 this Decree or in Exhibit A. The Court retains jurisdiction to all resolve disputes in  
9 enforcing the terms of the Decree.
- 10 H. Family Photos and Videos. Each party may, upon reasonable notice to the other  
11 party, borrow family photos or videos or the like for purposes of making copies  
12 and shall return the items within 30 days. The party possessing the photos or  
13 videos may, at his or her option, retain control of the items for the purposes of  
14 copying, provided that the requesting party is given a reasonable time to inspect  
15 and select the items for copying. The parties shall share the cost of copies  
16 equally.
- 17 I. Employment Benefits. Except as otherwise specifically provided herein, each party  
18 shall retain as his or her separate property, free from any interest in the other, all  
19 rights and benefits which have been derived as a result of past or present  
20 employment, union affiliations, military service, or United States, state or other  
21 citizenship (except rights the parties are entitled to receive by virtue of this  
22 relationship); including but not limited to sick leave benefits, insurance, death  
23 benefits, educational benefits and grants, health or welfare plans and all other  
24 contractual, legislated or donated benefits, whether vested or unvested, and  
whether directly or indirectly derived through the activity of the parties. Except as  
otherwise specifically provided herein, each party shall retain all rights and  
benefits to which he or she is entitled by state or federal law, including his/her own  
Social Security benefits as well as any benefits he/she may be entitled to by action  
of law as a former spouse.
- J. Compensating Property Payment. To satisfy the equitable apportionment of  
property and obligations, the Husband shall pay to the Wife the sum of  
\$1,455,154.00 on the following terms and conditions. The obligation shall bear  
simple interest at the rate of 6% annually and be payable in equal amortized  
monthly payments for a period of 15 years; that is, 180 equal installments. Such  
payments are due on the first day of each month commencing the first month  
following entry of this Decree. See amortization schedule attached as Exhibit 2.  
Delinquency of a payment in excess of 30 days shall accelerate the marital lien  
and the remaining balance shall become due and owing in full, with interest at the  
legal rate.

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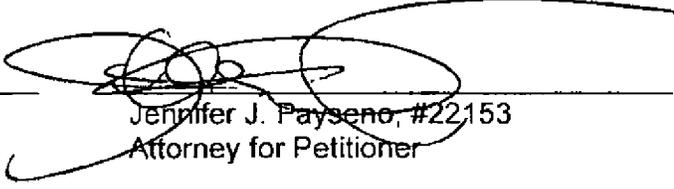
Dated: May 8, 2015

  
\_\_\_\_\_  
Judge **SALLY F. OLSEN**

Presented by:

Approved for entry:  
Notice of presentation waived:

  
\_\_\_\_\_  
Mark L. Yelish, #9517  
Attorney for Respondent

  
\_\_\_\_\_  
Jennifer J. Paysano, #22153  
Attorney for Petitioner

In re Marriage of Cheng

	ASSETS & DEBTS	Date of Value	Gross Value	Liens/ Debts	NET VALUE	TO HUSBAND		TO WIFE	
						COMM	SEP	COMM	SEP
1	Rockaway family residence		1,475,000	962,000	513,000			513,000	
2	Cheng Family Trust ***1521		x				x		
3	H's Chase ***0683		x				x		
4	Joint Chase ***0283		56		56			56	
5	W's Chase ***1056, 1139 & 7078		x					x	
6	East Forward Media		3,600,000		3,600,000	3,600,000			
7	LOC ***4001			45,213	45,213	-45,213			
8	Blue Iron, LLC & Springboard LLC		x			x			
9	Intellectual property		x			x			
10	W's FFM 401k ***0185		18,419		18,419			18,419	
11	H's FFM 401k ***6662		18,419		18,419	18,419			
12	Joint FFM Defined benefit ***2606		179,330		179,330	89,665		89,665	
13	Cheng Family Trust ***6201		176		176			176	
14	Cheng Family Trust ***6018		396		396			396	
15	W's SEP IRA ***2666		7,341		7,341			7,341	
16	W's IRA ***0317		18,999		18,999			18,999	
17	H's IRA ***2137		x				x		
18	H's Rollover IRA ***6574				0				
19	H's Roth IRA ***7207		78,864		78,864	39,432		39,432	
20	H's SEP IRA ***9569		10,459		10,459			10,459	
21	H's term life insurance policies - see Decree		x				x		
22	Husband disability policies - see Decree		x				x		
23	2002 Honda Odyssey LX		1,790		1,790			1,790	
24	2001 Subaru Outback		2,738		2,738	2,738			
25	Personal property in H's possession - see Decree				0				
26	Personal property in W's possession - see Decree				0				
27	Airline miles - see Decree				0				
28	W's Social Security benefits		x						x
29	H's Social Security benefits		x				x		
30	Sonia Sun Palamaru loan - paid by H			95,000	95,000	-95,000			

31	FFF 2013 Pension Debt paid by H		83,316	83,316		-83,316			
32	H's payment to Dr Adler			0					
33	H's payment to Bay Valuations			0					
34	H's credit cards		x	x		x			
35	W's credit cards		x	x			x		
36				0					
37				0					
<b>TOTALS</b>			5,411,987	1,185,529	4,226,458	3,610,041	-83,316	2,699,733	0

**MARITAL LIEN >**

Wife's percentage (entered by user) 50.0%  
 Husband's percentage (automatic) 50.0%

Each party's total dollars  
 Each party's percentage

1,455,154	1,455,154
2,154,887	2,154,887
50%	50%

## LOAN AMORTIZATION SCHEDULE

Prepared by Law Office of Mark L. Yelish PLLC

April 26, 2015

Borrower: Victor Cheng

Lender: Julia Cheng

Purpose of Loan: Equalization Lien

Amount of loan: \$1,455,154.00  
 Interest rate: 6.000%  
 Number of amortization periods: 180  
 Payments are to be made: Monthly  
 Amount of each regular payment: \$12,279.42  
 Date of Loan: 04-01-2015  
 First payment is due: 05-01-2015

Pmt #	Month	Payment	Amount Applied to Interest	Amount Applied to Principal	Remaining Balance
1	5	\$12,279.42	\$7,275.77	\$5,003.65	\$1,450,150.35
2	6	\$12,279.42	\$7,250.75	\$5,028.67	\$1,445,121.68
3	7	\$12,279.42	\$7,225.61	\$5,053.81	\$1,440,067.87
4	8	\$12,279.42	\$7,200.34	\$5,079.08	\$1,434,988.79
5	9	\$12,279.42	\$7,174.94	\$5,104.48	\$1,429,884.31
6	10	\$12,279.42	\$7,149.42	\$5,130.00	\$1,424,754.31
7	11	\$12,279.42	\$7,123.77	\$5,155.65	\$1,419,598.66
8	12	\$12,279.42	\$7,097.99	\$5,181.43	\$1,414,417.23
Totals for year 2015:			\$57,498.59	\$40,736.77	
9	1	\$12,279.42	\$7,072.09	\$5,207.33	\$1,409,209.90
10	2	\$12,279.42	\$7,046.05	\$5,233.37	\$1,403,976.53
11	3	\$12,279.42	\$7,019.88	\$5,259.54	\$1,398,716.99
12	4	\$12,279.42	\$6,993.58	\$5,285.84	\$1,393,431.15
13	5	\$12,279.42	\$6,967.16	\$5,312.26	\$1,388,118.89
14	6	\$12,279.42	\$6,940.59	\$5,338.83	\$1,382,780.06
15	7	\$12,279.42	\$6,913.90	\$5,365.52	\$1,377,414.54
16	8	\$12,279.42	\$6,887.07	\$5,392.35	\$1,372,022.19
17	9	\$12,279.42	\$6,860.11	\$5,419.31	\$1,366,602.88
18	10	\$12,279.42	\$6,833.01	\$5,446.41	\$1,361,156.47
19	11	\$12,279.42	\$6,805.78	\$5,473.64	\$1,355,682.83
20	12	\$12,279.42	\$6,778.41	\$5,501.01	\$1,350,181.82
Totals for year 2016:			\$83,117.63	\$64,235.41	

## Schedule of Payments

Page: 2

Pmt #	Month	Payment	Amount Applied to Interest	Amount Applied to Principal	Remaining Balance
21.	1	\$12,279.42	\$6,750.91	\$5,528.51	\$1,344,653.31
22	2	\$12,279.42	\$6,723.27	\$5,556.15	\$1,339,097.16
23	3	\$12,279.42	\$6,695.49	\$5,583.93	\$1,333,513.23
24	4	\$12,279.42	\$6,667.57	\$5,611.85	\$1,327,901.38
25	5	\$12,279.42	\$6,639.51	\$5,639.91	\$1,322,261.47
26	6	\$12,279.42	\$6,611.31	\$5,668.11	\$1,316,593.36
27	7	\$12,279.42	\$6,582.97	\$5,696.45	\$1,310,896.91
28	8	\$12,279.42	\$6,554.48	\$5,724.94	\$1,305,171.97
29	9	\$12,279.42	\$6,525.86	\$5,753.56	\$1,299,418.41
30	10	\$12,279.42	\$6,497.09	\$5,782.33	\$1,293,636.08
31	11	\$12,279.42	\$6,468.18	\$5,811.24	\$1,287,824.84
32	12	\$12,279.42	\$6,439.12	\$5,840.30	\$1,281,984.54
Totals for year 2017:			\$79,155.76	\$68,197.28	
33	1	\$12,279.42	\$6,409.92	\$5,869.50	\$1,276,115.04
34	2	\$12,279.42	\$6,380.58	\$5,898.84	\$1,270,216.20
35	3	\$12,279.42	\$6,351.08	\$5,928.34	\$1,264,287.86
36	4	\$12,279.42	\$6,321.44	\$5,957.98	\$1,258,329.88
37	5	\$12,279.42	\$6,291.65	\$5,987.77	\$1,252,342.11
38	6	\$12,279.42	\$6,261.71	\$6,017.71	\$1,246,324.40
39	7	\$12,279.42	\$6,231.62	\$6,047.80	\$1,240,276.60
40	8	\$12,279.42	\$6,201.38	\$6,078.04	\$1,234,198.56
41	9	\$12,279.42	\$6,170.99	\$6,108.43	\$1,228,090.13
42	10	\$12,279.42	\$6,140.45	\$6,138.97	\$1,221,951.16
43	11	\$12,279.42	\$6,109.76	\$6,169.66	\$1,215,781.50
44	12	\$12,279.42	\$6,078.91	\$6,200.51	\$1,209,580.99
Totals for year 2018:			\$74,949.49	\$72,403.55	
45	1	\$12,279.42	\$6,047.90	\$6,231.52	\$1,203,349.47
46	2	\$12,279.42	\$6,016.75	\$6,262.67	\$1,197,086.80
47	3	\$12,279.42	\$5,985.43	\$6,293.99	\$1,190,792.81
48	4	\$12,279.42	\$5,953.96	\$6,325.46	\$1,184,467.35
49	5	\$12,279.42	\$5,922.34	\$6,357.08	\$1,178,110.27
50	6	\$12,279.42	\$5,890.55	\$6,388.87	\$1,171,721.40
51	7	\$12,279.42	\$5,858.61	\$6,420.81	\$1,165,300.59
52	8	\$12,279.42	\$5,826.50	\$6,452.92	\$1,158,847.67
53	9	\$12,279.42	\$5,794.24	\$6,485.18	\$1,152,362.49
54	10	\$12,279.42	\$5,761.81	\$6,517.61	\$1,145,844.88
55	11	\$12,279.42	\$5,729.22	\$6,550.20	\$1,139,294.68
56	12	\$12,279.42	\$5,696.47	\$6,582.95	\$1,132,711.73
Totals for year 2019:			\$70,483.78	\$76,869.26	

## Schedule of Payments

Pmt #	Month	Payment	Amount Applied to Interest	Amount Applied to Principal	Remaining Balance
57	1	\$12,279.42	\$5,663.56	\$6,615.86	\$1,126,095.87
58	2	\$12,279.42	\$5,630.48	\$6,648.94	\$1,119,446.93
59	3	\$12,279.42	\$5,597.23	\$6,682.19	\$1,112,764.74
60	4	\$12,279.42	\$5,563.82	\$6,715.60	\$1,106,049.14
61	5	\$12,279.42	\$5,530.25	\$6,749.17	\$1,099,299.97
62	6	\$12,279.42	\$5,496.50	\$6,782.92	\$1,092,517.05
63	7	\$12,279.42	\$5,462.59	\$6,816.83	\$1,085,700.22
64	8	\$12,279.42	\$5,428.50	\$6,850.92	\$1,078,849.30
65	9	\$12,279.42	\$5,394.25	\$6,885.17	\$1,071,964.13
66	10	\$12,279.42	\$5,359.82	\$6,919.60	\$1,065,044.53
67	11	\$12,279.42	\$5,325.22	\$6,954.20	\$1,058,090.33
68	12	\$12,279.42	\$5,290.45	\$6,988.97	\$1,051,101.36
Totals for year 2020:			\$65,742.67	\$81,610.37	
69	1	\$12,279.42	\$5,255.51	\$7,023.91	\$1,044,077.45
70	2	\$12,279.42	\$5,220.39	\$7,059.03	\$1,037,018.42
71	3	\$12,279.42	\$5,185.09	\$7,094.33	\$1,029,924.09
72	4	\$12,279.42	\$5,149.62	\$7,129.80	\$1,022,794.29
73	5	\$12,279.42	\$5,113.97	\$7,165.45	\$1,015,628.84
74	6	\$12,279.42	\$5,078.14	\$7,201.28	\$1,008,427.56
75	7	\$12,279.42	\$5,042.14	\$7,237.28	\$1,001,190.28
76	8	\$12,279.42	\$5,005.95	\$7,273.47	\$993,916.81
77	9	\$12,279.42	\$4,969.58	\$7,309.84	\$986,606.97
78	10	\$12,279.42	\$4,933.03	\$7,346.39	\$979,260.58
79	11	\$12,279.42	\$4,896.30	\$7,383.12	\$971,877.46
80	12	\$12,279.42	\$4,859.39	\$7,420.03	\$964,457.43
Totals for year 2021:			\$60,709.11	\$86,643.93	
81	1	\$12,279.42	\$4,822.29	\$7,457.13	\$957,000.30
82	2	\$12,279.42	\$4,785.00	\$7,494.42	\$949,505.88
83	3	\$12,279.42	\$4,747.53	\$7,531.89	\$941,973.99
84	4	\$12,279.42	\$4,709.87	\$7,569.55	\$934,404.44
85	5	\$12,279.42	\$4,672.02	\$7,607.40	\$926,797.04
86	6	\$12,279.42	\$4,633.99	\$7,645.43	\$919,151.61
87	7	\$12,279.42	\$4,595.76	\$7,683.66	\$911,467.95
88	8	\$12,279.42	\$4,557.34	\$7,722.08	\$903,745.87
89	9	\$12,279.42	\$4,518.73	\$7,760.69	\$895,985.18
90	10	\$12,279.42	\$4,479.93	\$7,799.49	\$888,185.69
91	11	\$12,279.42	\$4,440.93	\$7,838.49	\$880,347.20
92	12	\$12,279.42	\$4,401.74	\$7,877.68	\$872,469.52
Totals for year 2022:			\$55,365.13	\$91,987.91	

## Schedule of Payments

Pmt #	Month	Payment	Amount Applied to Interest	Amount Applied to Principal	Remaining Balance
93	1	\$12,279.42	\$4,362.35	\$7,917.07	\$864,552.45
94	2	\$12,279.42	\$4,322.76	\$7,956.66	\$856,595.79
95	3	\$12,279.42	\$4,282.98	\$7,996.44	\$848,599.35
96	4	\$12,279.42	\$4,243.00	\$8,036.42	\$840,562.93
97	5	\$12,279.42	\$4,202.81	\$8,076.61	\$832,486.32
98	6	\$12,279.42	\$4,162.43	\$8,116.99	\$824,369.33
99	7	\$12,279.42	\$4,121.85	\$8,157.57	\$816,211.76
100	8	\$12,279.42	\$4,081.06	\$8,198.36	\$808,013.40
101	9	\$12,279.42	\$4,040.07	\$8,239.35	\$799,774.05
102	10	\$12,279.42	\$3,998.87	\$8,280.55	\$791,493.50
103	11	\$12,279.42	\$3,957.47	\$8,321.95	\$783,171.55
104	12	\$12,279.42	\$3,915.86	\$8,363.56	\$774,807.99
Totals for year 2023:			\$49,691.51	\$97,661.53	
105	1	\$12,279.42	\$3,874.04	\$8,405.38	\$766,402.61
106	2	\$12,279.42	\$3,832.01	\$8,447.41	\$757,955.20
107	3	\$12,279.42	\$3,789.78	\$8,489.64	\$749,465.56
108	4	\$12,279.42	\$3,747.33	\$8,532.09	\$740,933.47
109	5	\$12,279.42	\$3,704.67	\$8,574.75	\$732,358.72
110	6	\$12,279.42	\$3,661.79	\$8,617.63	\$723,741.09
111	7	\$12,279.42	\$3,618.71	\$8,660.71	\$715,080.38
112	8	\$12,279.42	\$3,575.40	\$8,704.02	\$706,376.36
113	9	\$12,279.42	\$3,531.88	\$8,747.54	\$697,628.82
114	10	\$12,279.42	\$3,488.14	\$8,791.28	\$688,837.54
115	11	\$12,279.42	\$3,444.19	\$8,835.23	\$680,002.31
116	12	\$12,279.42	\$3,400.01	\$8,879.41	\$671,122.90
Totals for year 2024:			\$43,667.95	\$103,685.09	
117	1	\$12,279.42	\$3,355.61	\$8,923.81	\$662,199.09
118	2	\$12,279.42	\$3,311.00	\$8,968.42	\$653,230.67
119	3	\$12,279.42	\$3,266.15	\$9,013.27	\$644,217.40
120	4	\$12,279.42	\$3,221.09	\$9,058.33	\$635,159.07
121	5	\$12,279.42	\$3,175.80	\$9,103.62	\$626,055.45
122	6	\$12,279.42	\$3,130.28	\$9,149.14	\$616,906.31
123	7	\$12,279.42	\$3,084.53	\$9,194.89	\$607,711.42
124	8	\$12,279.42	\$3,038.56	\$9,240.86	\$598,470.56
125	9	\$12,279.42	\$2,992.35	\$9,287.07	\$589,183.49
126	10	\$12,279.42	\$2,945.92	\$9,333.50	\$579,849.99
127	11	\$12,279.42	\$2,899.25	\$9,380.17	\$570,469.82
128	12	\$12,279.42	\$2,852.35	\$9,427.07	\$561,042.75
Totals for year 2025:			\$37,272.89	\$110,080.15	

## Schedule of Payments

Pmt #	Month	Payment	Amount Applied to Interest	Amount Applied to Principal	Remaining Balance
129	1	\$12,279.42	\$2,805.21	\$9,474.21	\$551,568.54
130	2	\$12,279.42	\$2,757.84	\$9,521.58	\$542,046.96
131	3	\$12,279.42	\$2,710.23	\$9,569.19	\$532,477.77
132	4	\$12,279.42	\$2,662.39	\$9,617.03	\$522,860.74
133	5	\$12,279.42	\$2,614.30	\$9,665.12	\$513,195.62
134	6	\$12,279.42	\$2,565.98	\$9,713.44	\$503,482.18
135	7	\$12,279.42	\$2,517.41	\$9,762.01	\$493,720.17
136	8	\$12,279.42	\$2,468.60	\$9,810.82	\$483,909.35
137	9	\$12,279.42	\$2,419.55	\$9,859.87	\$474,049.48
138	10	\$12,279.42	\$2,370.25	\$9,909.17	\$464,140.31
139	11	\$12,279.42	\$2,320.70	\$9,958.72	\$454,181.59
140	12	\$12,279.42	\$2,270.91	\$10,008.51	\$444,173.08
Totals for year 2026:			\$30,483.37	\$116,869.67	
141	1	\$12,279.42	\$2,220.87	\$10,058.55	\$434,114.53
142	2	\$12,279.42	\$2,170.57	\$10,108.85	\$424,005.68
143	3	\$12,279.42	\$2,120.03	\$10,159.39	\$413,846.29
144	4	\$12,279.42	\$2,069.23	\$10,210.19	\$403,636.10
145	5	\$12,279.42	\$2,018.18	\$10,261.24	\$393,374.86
146	6	\$12,279.42	\$1,966.87	\$10,312.55	\$383,062.31
147	7	\$12,279.42	\$1,915.31	\$10,364.11	\$372,698.20
148	8	\$12,279.42	\$1,863.49	\$10,415.93	\$362,282.27
149	9	\$12,279.42	\$1,811.41	\$10,468.01	\$351,814.26
150	10	\$12,279.42	\$1,759.07	\$10,520.35	\$341,293.91
151	11	\$12,279.42	\$1,706.47	\$10,572.95	\$330,720.96
152	12	\$12,279.42	\$1,653.60	\$10,625.82	\$320,095.14
Totals for year 2027:			\$23,275.10	\$124,077.94	
153	1	\$12,279.42	\$1,600.48	\$10,678.94	\$309,416.20
154	2	\$12,279.42	\$1,547.08	\$10,732.34	\$298,683.86
155	3	\$12,279.42	\$1,493.42	\$10,786.00	\$287,897.86
156	4	\$12,279.42	\$1,439.49	\$10,839.93	\$277,057.93
157	5	\$12,279.42	\$1,385.29	\$10,894.13	\$266,163.80
158	6	\$12,279.42	\$1,330.82	\$10,948.60	\$255,215.20
159	7	\$12,279.42	\$1,276.08	\$11,003.34	\$244,211.86
160	8	\$12,279.42	\$1,221.06	\$11,058.36	\$233,153.50
161	9	\$12,279.42	\$1,165.77	\$11,113.65	\$222,039.85
162	10	\$12,279.42	\$1,110.20	\$11,169.22	\$210,870.63
163	11	\$12,279.42	\$1,054.35	\$11,225.07	\$199,645.56
164	12	\$12,279.42	\$998.23	\$11,281.19	\$188,364.37
Totals for year 2028:			\$15,622.27	\$131,730.77	

Schedule of Payments

Prnt #	Month	Payment	Amount Applied to Interest	Amount Applied to Principal	Remaining Balance
165	1	\$12,279.42	\$941.82	\$11,337.60	\$177,026.77
166	2	\$12,279.42	\$885.13	\$11,394.29	\$165,632.48
167	3	\$12,279.42	\$828.16	\$11,451.26	\$154,181.22
168	4	\$12,279.42	\$770.91	\$11,508.51	\$142,672.71
169	5	\$12,279.42	\$713.36	\$11,566.06	\$131,106.65
170	6	\$12,279.42	\$655.53	\$11,623.89	\$119,482.76
171	7	\$12,279.42	\$597.41	\$11,682.01	\$107,800.75
172	8	\$12,279.42	\$539.00	\$11,740.42	\$96,060.33
173	9	\$12,279.42	\$480.30	\$11,799.12	\$84,261.21
174	10	\$12,279.42	\$421.31	\$11,858.11	\$72,403.10
175	11	\$12,279.42	\$362.02	\$11,917.40	\$60,485.70
176	12	\$12,279.42	\$302.43	\$11,976.99	\$48,508.71
Totals for year 2029:			\$7,497.38	\$139,855.66	
177	1	\$12,279.42	\$242.54	\$12,036.88	\$36,471.83
178	2	\$12,279.42	\$182.36	\$12,097.06	\$24,374.77
179	3	\$12,279.42	\$121.87	\$12,157.55	\$12,217.22
180	4	\$12,278.31	\$61.09	\$12,217.22	\$0.00
Totals for year 2030:			\$607.86	\$48,508.71	
Totals for all years:			\$755,140.49	\$1,455,154.00	

Hon. Sally F. Olsen

RECEIVED AND FILED  
OPEN COURT

MAY 08 2015

DAVID W. PETERSON  
KITSAP COUNTY CLERK

WSSR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KITSAP

In re Marriage of:

VICTOR K. CHENG,

No. 13-3-00959-1

Petitioner

ORDER OF CHILD SUPPORT

and

Final Order (ORS)

JULIA A. CHENG,

Clerk's Action Required

Respondent

I. Judgment Summary

1.1 Judgment Summary for Non-Medical Expenses

Does not apply.

1.2 Judgment Summary for Medical Support

Does not apply.

II. Basis

2.1 Type Of Proceeding

This order is entered under a petition for dissolution of marriage, pursuant to a decree of dissolution resulting from a trial.

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1 **2.2 Child Support Worksheet**

2 The child support worksheet which has been approved by the court is attached to this  
3 order and is incorporated by reference or has been initialed and filed separately and  
4 is incorporated by reference.

4 **2.3 Other:**

5 Does not apply.

6 **III. Findings and Order**

7 ***It Is Ordered:***

8 **3.1 Children for Whom Support is Required.**

<u>Name (first/last)</u>	<u>Age</u>
Alexandra Cheng	11
Charlotte Cheng	7
Daniella Cheng	5

11 **3.2 Person Paying Support (Obligor).**

Name:	Victor Cheng
Birth date:	July 20, 1973
Service address:	P.O. Box 10746 Bainbridge Island, WA 98110

15 ***The Obligor Parent Must Immediately File With The Court and the Washington  
16 State Child Support Registry, and Update as Necessary, the Confidential  
Information Form Required by RCW 26.23.050.***

17 ***The Obligor Parent Shall Update the Information Required by Paragraph 3.2  
18 Promptly After any Change in the Information. The Duty to Update the  
Information Continues as Long as any Support Debt Remains due Under This  
19 Order.***

20 For purposes of this Order of Child Support, the support obligation is based upon  
the following income:

21 A. Actual Monthly Net Income: \$40,060.47

**3.3 Person Receiving Support (Obligee):**

Name: Julia A. Cheng-Sun  
 Birth date: July 3, 1973  
 Service address: P.O. Box 11698  
 Bainbridge Island, WA 98110

***The Obligee Must Immediately File With The Court And The Washington State Child Support Registry and Update as Necessary the Confidential Information Form Required by RCW 26.23.050.***

***The Obligee Shall Update the Information Required by Paragraph 3.3 Promptly After any Change in the Information. The Duty to Update the Information Continues as Long as any Monthly Support Remains Due or any unpaid support debt remains due under this order.***

For purposes of this Order of Child Support, the support obligation is based upon the following income:

A. Actual Monthly Net Income: \$18,971

The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080.

**3.4 Service of Process.**

***Service of Process on the Obligor at the Address Required by Paragraph 3.2 or any Updated Address, or on the Obligee at the Address Required by Paragraph 3.3 or any Updated Address, may Be Allowed or Accepted as Adequate in any Proceeding to Establish, Enforce or Modify a Child Support Order Between the Parties by Delivery of Written Notice to the Obligor or Obligee at the Last Address Provided.***

**3.5 Transfer Payment.**

The obligor parent shall pay the following amounts per month for the children:

<u>Name</u>	<u>Amount</u>	
Alexandra Cheng	\$2,000	
Charlotte Cheng	\$1,500	
Daniella Cheng	\$1,500	
<b>Total Monthly Transfer Amount</b>		<b>\$5,000</b>

***The Obligor Parent's Privileges to Obtain or Maintain a License, Certificate, Registration, Permit, Approval, or Other Similar Document Issued by a***

**Licensing Entity Evidencing Admission to or Granting Authority to Engage in a Profession, Occupation, Business, Industry, Recreational Pursuit, or the Operation of a Motor Vehicle may Be Denied or may Be Suspended if the Obligor Parent is not in Compliance With This Support Order as Provided in Chapter 74.20A Revised Code of Washington.**

**3.6 Standard Calculation.**

\$2,106.00 per month. (See Worksheet line 17.)

**3.7 Reasons for Deviation From Standard Calculation.**

The child support ordered in paragraph 3.5 deviates from the standard calculation for the following reasons:

The court has set the transfer payment in an amount that exceeds the standard calculation based upon the standard of living of each parent.

**3.8 Reasons Why Request for Deviation Was Denied.**

Does not apply. An upward calculation of child support was ordered.

**3.9 Starting Date and Day to Be Paid.**

Starting Date: May 1, 2015  
Day(s) of the month support is due: On the first day of the month.

**3.10 Incremental Payments**

Does not apply.

**3.11 Making Support Payments.**

Direct payment: Support payments shall be made directly to:

Julia Cheng via electronic funds transfer to an account designated by the recipient.

A party required to make payments to the Washington State Support Registry will not receive credit for a payment made to any other party or entity. The support obligor shall keep the registry informed whether he or she has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information.

Any time the Division of Child Support is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the receiving parent

1 might be required to submit an accounting of how the support, including any cash  
2 medical support, is being spent to benefit the children.

3 **3.12 Wage Withholding Action**

4 Withholding action may be taken against wages, earnings, assets, or benefits, and  
5 liens enforced against real and personal property under the child support statutes of  
6 this or any other state, without further notice to the support obligor at any time after  
7 entry of this order unless an alternative provision is made below:

8 [If the court orders immediate wage withholding in a case where Division of Child  
9 Support does not provide support enforcement services, a mandatory wage  
10 assignment under Chap. 26.18 RCW must be entered and support payments must be  
11 made to the Support Registry.]

12 Wage withholding, by notice of payroll deduction or other income withholding action  
13 under Chapter 26.18 RCW or Chapter 74.20A RCW, without further notice to the  
14 support obligor, is delayed until a payment is past due, because the Division of Child  
15 Support does not provide support enforcement services for this case [see 3.11] and  
16 there is good cause [as stated below under "Good Cause"] not to require immediate  
17 income withholding:

18 Good Cause: Past performance of support payments by the father.

19 **3.13 Termination of Support.**

20 Support shall be paid until the children reach the age of 18, or as long as the children  
21 remain(s) enrolled in high school, whichever occurs last, except as otherwise  
22 provided below in Paragraph 3.14.

23 **3.14 Post Secondary Educational Support.**

24 The parents shall contribute towards the cost of postsecondary educational support  
for the children. Each parent's contribution may be decided by agreement or, lacking  
agreement, by the court.

**3.15 Payment for Expenses Not Included in the Transfer Payment.**

The petitioner/Father shall pay 72% and the respondent/Mother 28% (each parent's  
proportional share of income from the Child Support Schedule Worksheet, line 6) of  
the following expenses incurred on behalf of the children listed in Paragraph 3.1:

Work-related child care.

Educational expenses, including private school tuition.

Other: Agreed extracurricular activities

Payments shall be made to the provider of the service whenever possible. When one parent advances a shared expense, the other parent shall provide reimbursement within 14 days of being provided with verification of the expense.

**3.16 Periodic Adjustment.**

Child support may be adjusted every year that maintenance decreases or periodically as authorized by Washington Statute.

**3.17 Income Tax Exemptions.**

Tax exemptions for the children shall be allocated as follows:

So long as there are three exemptions, each parent shall claim the exemption for one child, and the third shall be alternated with the mother receiving the exemption in odd-numbered years. When only two exemptions remain, each parent shall claim one. When only one remains, the parents shall alternate the exemption, with the mother receiving the exemption in odd-numbered years and the father receiving the exemption in even-numbered years.

The parents shall sign the federal income tax dependency exemption waiver.

**3.18 Medical Support – Health Insurance**

Each parent shall provide health insurance coverage for the children listed in paragraph 3.1, as follows:

**3.18.1 Health Insurance** (either check box A(1), or check box A(2) and complete sections B and C. *Section D applies in all cases.*)

A. Evidence

(2)  There is sufficient evidence for the court to determine which parent must provide coverage and which parent must contribute a sum certain. Fill in B and C below.

B. Findings about insurance:

The court makes the following findings:

Victor Cheng	Julia Cheng	Check at least one of the following findings for each parent.
--------------	-------------	---

1	<input checked="" type="checkbox"/>		Insurance coverage for the children is available <u>and</u> accessible to this parent at \$0 cost (children's portion of the premium, only).
2			
3		<input checked="" type="checkbox"/>	Other: This parent does not have insurance available through an employer or union and the cost for private coverage would exceed 25% of basic support
4			
5			

C. Parties' obligations:

The court makes the following orders:

<u>Victor Cheng</u>	Julia Cheng	<b>Check at least one of the following options for each parent.</b>
<input checked="" type="checkbox"/>		This parent shall provide health insurance coverage for the children that is available through <b>employment or is union-related</b> as long as the cost of such coverage <u>does not exceed</u> 25% of this parent's basic support obligation.
	<input checked="" type="checkbox"/>	This parent's contribution to the health insurance premium is calculated in the Worksheet and included in the transfer payment.

D. Both parties' obligation:

If the children are receiving state financed medical coverage, the Division of Child Support may enforce the responsible parent's monthly premium.

The parent(s) shall maintain health insurance coverage, if available for the children listed in paragraph 3.1, until further order of the court or until health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

A parent who is required under this order to provide health insurance coverage is liable for any covered health care costs for which that parent receives direct payment from an insurer.

A parent who is required under this order to provide health insurance coverage shall provide proof that such coverage is available or not available within 20 days of the

1 entry of this order to the other parent or the Washington State Support Registry if the  
2 parent has been notified or ordered to make payments to the Washington State  
Support Registry.

3 If proof that health insurance coverage is available or not available is not provided  
4 within 20 days, the parent seeking enforcement or the Department of Social and  
5 Health Services may seek direct enforcement of the coverage through the other  
parent's employer or union without further notice to the other parent as provided  
under Chapter 26.18 RCW.

### 6 **3.18.2 Change of Circumstances and Enforcement**

7 A parent required to provide health insurance coverage must notify both the Division  
of Child Support and the other parent when coverage terminates.

8 If the parents' circumstances change, or if the court has not specified how medical  
9 support shall be provided, the parents' medical support obligations will be enforced as  
10 provided in RCW 26.18.170. If a parent does not provide proof of accessible  
11 coverage for the children through private insurance, a parent may be required to  
satisfy his or her medical support obligation by doing one of the following, listed in  
order of priority:

- 12 1) Providing or maintaining health insurance coverage through the parent's  
employment or union at a cost not to exceed 25% of that parent's basic  
support obligation;
- 13 2) Contributing the parent's proportionate share of a monthly premium being paid  
14 by the other parent for health insurance coverage for the children listed in  
paragraph 3.1 of this order, not to exceed 25% of the obligated parent's basic  
support obligation; or
- 15 3) Contributing the parent's proportionate share of a monthly premium paid by the  
16 state if the children receives state-financed medical coverage through DSHS  
under RCW 74.09 for which there is an assignment.

17 A parent seeking to enforce the obligation to provide health insurance coverage may  
18 apply for support enforcement services from the Division of Child Support; file a  
19 motion for contempt (use form WPF DRPCU 05.0100, Motion/Declaration for an  
Order to Show Cause re Contempt); or file a petition.

### 20 **3.19 Uninsured Medical Expenses.**

21 Both parents have an obligation to pay their share of uninsured medical  
expenses, including counseling, vision, dental and orthodontia.

22 The petitioner/Father shall pay 72% of uninsured medical expenses (unless  
23 stated otherwise, the petitioner's proportional share of income from the  
Worksheet, line 6) and the respondent/Mother shall pay 28% of uninsured

1 medical expenses (unless stated otherwise, the respondent's proportional  
2 share of income from the Worksheet, line 6).

3 Payments shall be made to the provider of the service whenever possible. When one  
4 parent advances a shared expense, the other parent shall provide reimbursement  
5 within 14 days of being provided with verification of the expense.

6 **3.20 Back Child Support.**

7 No back child support is owed at this time.

8 No back interest is owed at this time.

9 **3.21 Past Due Unpaid Medical Support**

10 No past due unpaid medical support is owed at this time.

11 **3.22 Other Unpaid Obligations**

12 No other obligations are owed at this time.

13 **3.22 Other.**

14 The father shall maintain his existing life insurance policy, naming the wife as primary  
15 beneficiary in an amount sufficient to meet all future child support obligations, include  
16 post-secondary educational expenses.

17 Each parent's obligation to pay child support shall survive each parent's death and  
18 shall be a lien against a parent's estate to the extent not satisfied through life  
19 insurance proceeds or social security.

20 Dated: May 8, 2015

21   
22 Judge **SALLY F. OLSEN**

23 Presented by:

24 Approved for entry:  
Notice of presentation waived:

25   
26 Mark L. Yelish, #98517  
27 Attorney for Respondent

28   
29 Jennifer J. Paysano, #22153  
30 Attorney for Petitioner

## WORKSHEET SYNOPSIS

	FATHER	MOTHER	COMBINED
1. Monthly Net Income Tax Year: Manual	\$40,060.47	\$15,599.39	\$55,659.86
2. Proportional Share of Income	.720	.280	
3. Basic Support:			
Alexandra	\$975.00		
Charlotte	\$975.00		
Daniella	\$975.00		
4. TOTAL	\$2,925.00		
5. Basic Support Obligation with Income Limitations	\$2,106.00	\$819.00	
6. Obligation for Health Care, Day Care, and Special Exp.			-
7. TOTAL OBLIGATION	\$2,106.00	\$819.00	
8. CREDIT for Medical			-
9. CREDIT for Day Care and Special Exp.			-
10. CREDIT for Ordinary Expenses			-
11. TOTAL CREDITS			-
12. Father Pays Mother	\$2106.00		-

Calculated Using Self Support Reserve: 2015

File Name: Cheng, Victor.SCP

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## Washington State Child Support Schedule Worksheets

Proposed by  State of WA  Other (CSWP)  
 Or,  Signed by the Judicial/Reviewing Officer. (CSW)

**Mother** Julia Cheng-Sun  
**County** KITSAP

**Father** Victor Cheng  
**Case No.** 13-3-00959-1

Child(ren) and Age(s): Alexandra, 11; Charlotte, 7; Daniella, 5		
Part I: Income (see Instructions, page 6)		
1. Gross Monthly Income	Father	Mother
a. Wages and Salaries	\$80000.00	-
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Maintenance Received	-	\$20000.00
e. Other Income	-	-
f. Imputed Income	-	-
g. Total Gross Monthly Income (add lines 1a through 1f)	\$80000.00	\$20000.00
2. Monthly Deductions from Gross Income		
a. Income Taxes (Federal and State) Tax Year: Manual	\$17,605.03	\$4,400.61
b. FICA (Soc. Sec. + Medicare)/Self-Employment Taxes	\$2,334.50	-
c. State Industrial Insurance Deductions	-	-
d. Mandatory Union/Professional Dues	-	-
e. Mandatory Pension Plan Payments	-	-
f. Voluntary Retirement Contributions	-	-
g. Maintenance Paid	\$20,000.00	-
h. Normal Business Expenses	-	-
i. Total Deductions from Gross Income (add lines 2a through 2h)	\$39,939.53	\$4,400.61
3. Monthly Net Income (line 1g minus 2i)	\$40,060.47	\$15,599.39
4. Combined Monthly Net Income (line 3 amounts combined)	\$55,659.86	
5. Basic Child Support Obligation (Combined amounts -->)	\$2,925.00	
Alexandra     \$975.00		
Charlotte     \$975.00		
Daniella     \$975.00		
6. Proportional Share of Income (each parent's net income from line 3 divided by line 4)	.720	.280

WSCSS-Worksheets - Mandatory (CSW/CSWP) 07/2013 Page 1 of 5

<b>Part II: Basic Child Support Obligation</b> (see Instructions, page 7)			
7. Each Parent's Basic Child Support Obligation without consideration of low income limitations (Each parent's Line 6 times Line 5.)		<b>\$2,106.00</b>	<b>\$819.00</b>
8. Calculating low income limitations: Fill in only those that apply.			
Self-Support Reserve: (125% of the Federal Poverty Guideline.)		<b>\$1,226.00</b>	
a. Is combined Net Income Less Than \$1,000? If yes, for each parent enter the presumptive \$50 per child.		-	-
b. Is Monthly Net Income Less Than Self-Support Reserve? If yes, for that parent enter the presumptive \$50 per child.		-	-
c. Is Monthly Net Income equal to or more than Self-Support Reserve? If yes, for each parent subtract the self-support reserve from line 3. If that amount is less than line 7, enter that amount or the presumptive \$50 per child, whichever is greater.		-	-
9. Each parent's basic child support obligation after calculating applicable limitations. For each parent, enter the lowest amount from line 7, 8a - 8c, but not less than the presumptive \$50 per child.		<b>\$2,106.00</b>	<b>\$819.00</b>
<b>Part III: Health Care, Day Care, and Special Child Rearing Expenses</b> (see Instructions, page 8)			
10. Health Care Expenses		<b>Father</b>	<b>Mother</b>
a. Monthly Health Insurance Paid for Child(ren)		-	-
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)		-	-
c. Total Monthly Health Care Expenses (line 10a plus line 10b)		-	-
d. Combined Monthly Health Care Expenses (line 10c amounts combined)		-	-
11. Day Care and Special Expenses			
a. Day Care Expenses		-	-
b. Education Expenses		-	-
c. Long Distance Transportation Expenses		-	-
d. Other Special Expenses (describe)		-	-
		-	-
		-	-
e. Total Day Care and Special Expenses (Add lines 11a through 11d)		-	-
12. Combined Monthly Total Day Care and Special Expenses (line 11e amounts Combined)		-	-
13. Total Health Care, Day Care, and Special Expenses (line 10d plus line 12)		-	-
14. Each Parent's Obligation for Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 13)		-	-
<b>Part IV: Gross Child Support Obligation</b>			
15. Gross Child Support Obligation (line 9 plus line 14)		<b>\$2,106.00</b>	<b>\$819.00</b>
<b>Part V: Child Support Credits</b> (see Instructions, page 9)			
16. Child Support Credits			
a. Monthly Health Care Expenses Credit		-	-
b. Day Care and Special Expenses Credit		-	-

c. Other Ordinary Expenses Credit (describe)	-	-
d. Total Support Credits (add lines 16a through 16c)	-	-
<b>Part VI: Standard Calculation/Presumptive Transfer Payment (see Instructions, page 9)</b>		
17. Standard Calculation (line 15 minus line 16d or \$50 per child whichever is greater)	<b>\$2,106.00</b>	<b>\$819.00</b>
<b>Part VII: Additional Informational Calculations</b>		
18. 45% of each parent's net income from line 3 (.45 x amount from line 3 for each parent)	<b>\$18,027.21</b>	<b>\$7,019.73</b>
19. 25% of each parent's basic support obligation from line 9 (.25 x amount from line 9 for each parent)	<b>\$526.50</b>	<b>\$204.75</b>
<b>Part VIII: Additional Factors for Consideration (see Instructions, page 9)</b>		
20. Household Assets (List the estimated value of all major household assets.)	Father's Household	Mother's Household
a. Real Estate	-	<b>\$500,000.00</b>
b. Investments	-	<b>\$572.00</b>
c. Vehicles and Boats	<b>\$2,700.00</b>	<b>\$1,700.00</b>
d. Bank Accounts and Cash	-	-
e. Retirement Accounts	<b>\$147,516.00</b>	<b>\$184,315.00</b>
f. Other: (describe)	-	-
	-	-
	-	-
	-	-
21. Household Debt (List liens against household assets, extraordinary debt.)		
a. LOC	<b>\$45,213.00</b>	-
b.	-	-
c.	-	-
d.	-	-
e.	-	-
f.	-	-
22. Other Household Income		
a. Income Of Current Spouse or Domestic Partner (if not the other parent of this action)		
Name	-	-
Name	-	-
b. Income Of Other Adults in Household		
Name	-	-
Name	-	-
c. Gross Income from overtime or from second jobs the party is asking the court to exclude per Instructions, page 8	-	-
d. Income Of Child(ren) (if considered extraordinary)		
Name	-	-
Name	-	-

<b>e. Income From Child Support</b>			
Name		-	-
Name		-	-
<b>f. Income From Assistance Programs</b>			
Program		-	-
Program		-	-
<b>g. Other Income (describe)</b>			
		-	-
		-	-
<b>23. Non-Recurring Income (describe)</b>			
		-	-
		-	-
<b>24. Child Support Owed, Monthly, for Biological or Legal Child(ren)</b>		<b>Father's Household</b>	<b>Mother's Household</b>
Name/age:	Paid <input type="checkbox"/> Yes <input type="checkbox"/> No	-	-
Name/age:	Paid <input type="checkbox"/> Yes <input type="checkbox"/> No	-	-
Name/age:	Paid <input type="checkbox"/> Yes <input type="checkbox"/> No	-	-
<b>25. Other Child(ren) Living In Each Household (First name(s) and age(s))</b>			
<b>26. Other Factors For Consideration</b>			

Other Factors For Consideration (continued) (attach additional pages as necessary)

**Signature and Dates**

I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these Worksheets is complete, true, and correct.

Mother's Signature

Father's Signature

Date

City

Date

City

Judicial/Reviewing Officer

**SALLY F. OLSEN**

Date

Worksheet certified by the State of Washington Administrative Office of the Courts.

Photocopying of the worksheet is permitted.

WSCSS-Worksheets - Mandatory (CSW/CSWP) 07/2013 Page 5 of 5

SupportCalc® 2015

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JUL - 1 2015  
DAVID W. PETERSON

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KITSAP COUNTY**

In re the Marriage of:  
VICTOR K. CHENG,

No. 13-3-00959-1

Petitioner,

and

**ORDER ON RECONSIDERATION**

JULIA A. CHENG,

Respondent.

THIS MATTER, having come before the Honorable Sally Olsen, Judge of the above-entitled Court, upon Petitioner's Motion for Reconsideration of the final dissolution-pleadings entered on May 8, 2015, the Petitioner being represented by his attorney, Jennifer J. Payseno and the Respondent being represented by her attorneys Mark L. Yelish and Douglas P. Becker, and the Court having considered the motion, declarations, responsive pleadings and the court file and being duly advised, it is hereby:

ORDERED, ADJUDGED AND DECREED that the motion is DENIED IN PART AND GRANTED IN PART, as follows:

1. Payment of the Fast Forward Media, Inc., 2013 Mandatory Pension Debt:

Petitioner's request to make the marital community liable for payment of the corporation's mandatory pension payment for 2013 is denied. The Court finds it was a separate debt because it was a debt of the company awarded to Petitioner as his separate property and the debt was paid from separate funds. The Court finds

ORDER ON RECONSIDERATION

-- 1 --

**App. D**

**JUDGE SALLY F. OLSEN**  
Kitsap County Superior Court  
614 Division Street, MS-24  
Port Orchard, WA 98366  
(360) 337-7140

1 Petitioner had control of the business profits throughout 2013 and 2014 and he  
2 opted to wait until 2014 to effectuate payment of the debt. The Court finds the  
3 mandatory pension payment was accounted for by the experts of both parties in  
4 valuing the business, and therefore the payment was a business expense and not a  
5 personal expense that can be credited to Petitioner as though he had paid a  
6 community liability. 26 USC §412 specifies that it is the employer (Fast Forward  
7 Media, Inc.) that makes the payment, not the employees (the parties). The Court  
8 finds that when Judge Roof of the above-entitled Court previously ordered that  
9 Petitioner should receive credit for payment of the pension debt in 2014, Judge  
10 Roof did not have before him information identifying the debt as a business  
11 liability.

12  
13 2. **Payment of the 2013 Personal Income Tax Debt:** Petitioner's request to make the  
14 community liable for payment of the 2013 income tax payment that Petitioner  
15 effectuated in 2014 is denied. The Court finds Petitioner had control of the profits  
16 of the family business in 2013 and 2014 and he had control of the documentation  
17 thereof and he failed to present evidence at trial to show what portion of the 2013  
18 taxes Respondent could rightly be held jointly liable for. The parties were separated  
19 on July 31, 2013, when Petitioner locked Respondent out of the house and out of  
20 the community financial accounts. Respondent had no access to profits from the  
21 family business during the most profitable season of the year, the fourth quarter.

22  
23 3. **Interest Rate on the Transfer Payment to Equalize Property Division:**  
24 Petitioner's request to reduce the interest rate on payments owed to Respondent to  
25 equalize the property division is denied.

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27 4. **Acceleration Clause:** Petitioner's request to remove the acceleration clause ordered  
28 by the Court to protect Respondent's right to receive payments from Petitioner  
29 according to the amortization schedule ordered by the Court is denied.

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5. **Life Insurance**: Petitioner's request to substitute more affordable life insurance policies to secure his court ordered obligations is denied.

6. **Modification of Child Support Worksheets**: With regard to Petitioner's request to modify entries on the child support worksheets entered by the Court pursuant to trial, the Court orders as follows:

- a. Petitioner's request to impute interest income to Respondent is denied;
- b. Petitioner's request to impute income other than spousal maintenance to Respondent is denied;
- c. Petitioner's request to include a deduction from his gross salary for the business' mandatory pension payment is denied.
- d. Petitioner's request to increase his income tax rate is denied.

7. **Life Insurance for Respondent**: Petitioner's request that Respondent be ordered to maintain life insurance is denied.

8. **Reduction of Mortgage Principal**: Petitioner's request to be credited with the amount of mortgage principal reduced by his payments since trial is denied.

9. **Airline Miles**: Petitioner's request that each party keep their own airline miles is granted.

10. On the basis of the foregoing orders, the following provisions of the May 8, 2015 Decree of Dissolution shall be amended as follows:

- a. Paragraph 3.14(E) is hereby amended to read as follows:

Each party shall retain all mileage plan accounts and miles in his or her name.

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11. On the basis of the foregoing orders, the following provisions of the May 8, 2015 Child Support Worksheet shall be amended as follows:

The Husband's income shall be listed as \$20,416.70 per month salary and \$59,583.30 Business Income per month.

12. New Documentation: The Court finds the letter of Petitioner's expert, Steven Kessler, provided with Petitioner's moving documents, to be irrelevant, new, cumulative and improper commentary on the outcome of trial and orders the letter stricken from the record.

The Court finds the following new exhibits provided by Petitioner with his moving declaration to be new, irrelevant and unresponsive and orders them stricken from the record: R2, R9, R10, R12, R13, and R15

DATED this 1 day of July, 2015

  
Sally T. Olsen  
JUDGE

## SMITH GOODFRIEND PS

January 22, 2016 - 4:43 PM

### Transmittal Letter

Document Uploaded: 7-479371-Appellants' Brief.pdf

Case Name: Cheng v. Cheng

Court of Appeals Case Number: 47937-1

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Appellants'

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Jenna Sanders - Email: [Jenna@Washingtonappeals.com](mailto:Jenna@Washingtonappeals.com)

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[jennifer@mckinleyirvin.com](mailto:jennifer@mckinleyirvin.com)  
[kzimmerman@mckinleyirvin.com](mailto:kzimmerman@mckinleyirvin.com)  
[jmoore@mckinleyirvin.com](mailto:jmoore@mckinleyirvin.com)  
[myelish@cmpyd.com](mailto:myelish@cmpyd.com)  
[dpb@wechslerbecker.com](mailto:dpb@wechslerbecker.com)  
[ken@appeal-law.com](mailto:ken@appeal-law.com)  
[cate@washingtonappeals.com](mailto:cate@washingtonappeals.com)

[valerie@washingtonappeals.com](mailto:valerie@washingtonappeals.com)