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Division II  
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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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IN RE THE MARRIAGE OF:

THOMAS F. GREEN,

Appellant,

v.

GINA R. GREEN,

Respondent.

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**APPELLANT'S REPLY BRIEF**

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## I. ARGUMENT

### A. ALL OF THE ISSUES WHICH MR. GREEN RAISED BEFORE THIS COURT CAN BE CONSIDERED ON APPEAL.

In a preface titled “Issues Raised Which Should Not Be Considered,” Ms. Green argues that three of the issues raised by Mr. Green in his appeal “were raised before the trial court, and thus should not be considered by an appellate court.” Response Brief at 14. It appears that this allegation contains a typo (omission of the word “not” before “raised”), but in any event, these issues are that (1) the terms of the survivor benefit are disputed, (2) Ms. Green’s maintenance is disputed, and (3) material terms are missing from the agreement (reiterated in a subsequent subsection, *see* Response Brief at 37). Mr. Green here emphasizes that all the issues he has raised before this Court were also raised before the trial court, and thus can be considered on appeal.

Ms. Green misinterprets at least one of Mr. Green’s arguments. He is not claiming that material terms are “missing” from the parties’ alleged settlement agreement in the informal writings, but rather that material terms upon which the parties never agreed were erroneously *included* in the Property Settlement Agreement (“PSA”). Even if the Court considers this distinction a mere difference of perspective, however, all three of the aforementioned issues Ms. Green seeks to keep from this Court’s review were still adequately raised before the trial court. Mr. Green’s response to

Ms. Green's motion to adopt their alleged settlement agreement stated that "not only is a material term disputed as to the pension [to be divided with Ms. Green], but the maintenance obligation was made nonmodifiable . . . . That alone creates a material dispute." CP 116. Counsel for Mr. Green, Jason Fugate ("Mr. Fugate"), affirmed that "[t]his entire discussion" in dispute "was tied to maintenance," as well as a related debate over what survivor benefit Ms. Green would receive. CP 121. "[T]here was a significant problem" with the purportedly final PSA and so, Mr. Green argued, the parties "had a misunderstanding and a mutual mistake of fact" at odds with the certainty claimed by Ms. Green's motion. CP 123.

These arguments were reiterated in Mr. Green's motion to reconsider, where he stated it was "clearly a disputed fact" whether the parties agreed for Ms. Green's benefit to equal half of Mr. Green's entire career benefits in exchange for reduced maintenance payments. CP 247. He also reiterated that "a material term in the documents . . . of nonmodifiability of maintenance was never even discussed in the emails," and that the inclusion of this material term was part of why Mr. Green and Mr. Fugate refused to sign the PSA. CP 248–249. The trial court may have stricken the term accordingly, but Ms. Green cannot use that striking to retroactively argue Mr. Green never raised an issue of material terms to begin with.

As such, all the issues Mr. Green raises on appeal, including those concerning the division of survivor benefits to Ms. Green, the payment of maintenance to Ms. Green, and material terms included in the PSA without Mr. Green's agreement, were appropriately raised before the trial court. This Court may and should consider them accordingly.

**B. MS. GREEN INACCURATELY CHARACTERIZES MR. GREEN'S BURDEN OF PROOF UNDER THE STANDARD OF REVIEW.**

For the most part, Ms. Green accurately characterizes the standard of review for this appeal as set forth in Mr. Green's appellate brief. *See generally* Response Brief at 14–16. However, she incorrectly suggests Mr. Green could not meet his burden of proof under this standard. Specifically, Ms. Green implies Mr. Green has not produced sufficient “cognizable materials” showing a genuine dispute of fact “regarding the material terms of the agreement or the intent to be bound,” beyond a declaration of subjective intent. *Id.* at 15 (quoting *In re Marriage of Ferree*, 71 Wn. App. 35, 44, 856 P.2d 706, 711 (1993); *Morris v. Maks*, 69 Wn. App. 865, 871, 850 P.2d 1357, 1360 (1993)).

Mr. Green has produced such cognizable materials as objectively as he can. He never had a reason to raise a dispute of fact until Ms. Green drafted the PSA on an assumption there was no dispute. To wit, Mr. Green did not know Ms. Green misinterpreted his proposed terms for their

agreement until she had already prepared the PSA for presentation, at which point she claimed a final agreement had already *been* formed by their emails. By that *ex post facto* logic, Mr. Green would be stuck between a rock and a hard place: in need of objective proof he had no meeting of the minds with Ms. Green, and yet having neither the ability nor any reason to act in a manner which would produce such proof until he saw the PSA. By that time, though, accordingly to Ms. Green, it was already too late to question their supposedly final agreement.

This is an unjust position for Mr. Green to be placed in while trying to meet his burden of proof. Instead, this Court should remain focused on the core question in this matter: whether, read in the light most favorable to Mr. Green (the nonmoving party at the trial court level), there exists a genuine material issue of fact. *See, e.g., Landstar Inway Inc. v. Samrow*, 181 Wn. App. 109, 120, 325 P.3d 327, 335 (2014); *see also* Civil Rule (“CR”) 56(c). A ruling in the movant’s favor is proper only if reasonable minds could reach but one conclusion from the evidence presented. *See Ofuasia v. Smurr*, 198 Wn. App. 133, 141, 392 P.3d 1148, 1153 (2017).

Ms. Green cites *In re Patterson* for the proposition that an agreement so disputed may nevertheless be enforced if the movant “show[s] it was reduced to writing and signed by the party or attorney

denying the agreement.” 93 Wn. App. 579, 589, 969 P.2d 1106, 1112 (1999); Response Brief at 16. However, while superficially similar to the instant case, *Patterson’s* circumstances are distinct. In that case, the parties signed a settlement agreement which clearly stated that it was binding and enforceable under CR 2A, and the party opposing its enforcement did not do so until almost five months later. *Patterson*, 93 Wn. App. at 581, 969 P.2d at 1108. Yet neither Mr. Green nor Mr. Fugate signed the PSA, *see* CP 100, and Mr. Green immediately told Ms. Green after seeing it that he did not agree with its terms, CP 176. Moreover, in *Patterson*, the nonmovant admitted he had reached an agreement, and he did not dispute its terms. 93 Wn. App. at 584, 969 P.2d at 1109. In contrast, Mr. Green disputes that he reached an agreement, and he also disputes the terms of that agreement. Overall, *In re Patterson* is not practically comparable to this matter, and this Court should not consider it binding on the standard of review.

For the reasons further established below, and in Mr. Green’s appellate brief, reasonable minds could reach more than one conclusion as to whether the Greens and their attorneys came to an agreement in this matter. With the presentation of this genuine issue of material fact, Mr. Green more than meets his burden of proof.

**C. A SETTLEMENT AGREEMENT DID NOT FORM BECAUSE THERE WAS NO OBJECTIVE MANIFESTATION OF MUTUAL ASSENT OR A MEETING OF THE MINDS.**

Ms. Green accurately cites CR 2A and RCW 2.44.010 as bases upon which to compel enforcement of a settlement agreement. However, as Ms. Green also acknowledges, general contract law is not supplanted by CR 2A—rather, CR 2A supplements it. Response Brief at 17; *see Ferree*, 71 Wn. App. at 39, 856 P.2d at 711; *Morris*, 69 Wn. App. at 868; 850 P.2d at 1358–59. A settlement agreement is a contract, and so the parties must objectively manifest their mutual assent to its essential terms for it to be valid and binding. *Evans & Son, Inc. v. City of Yakima*, 136 Wn. App. 471, 477, 149 P.3d 691, 694 (2006).

Specifically, at a basic level, a contract must contain an offer, an acceptance, and consideration therefor. These are the bedrock of an “agreement”: “a mutual understanding between two or more persons about their relative rights and duties regarding past or future performances,” a “manifestation of mutual assent.” *Agreement*, Black’s Law Dictionary (10th ed. 2014). Another fundamental contract principle which accompanies acceptance is a “meeting of the minds”: “actual assent by both parties to the formation of a contract, meaning they agreed to the same terms, conditions, and subject matter.” *Meeting of the Minds*, Black’s Law Dictionary (10th ed. 2014).

In this case, an offer for settlement was indisputably made, and consideration for its acceptance was discussed at length. The issue is simply whether that offer was accepted. It was not, because there was no agreement or meeting of the minds as to what that acceptance entailed, and so a contract did not form. Specifically, there was no mutual understanding between Mr. Green and Ms. Green as to allocation of his retirement account earnings and survivorship benefit. When negotiating Mr. Green's PERS 2 retirement plan's allocation, Mr. Fugate believed he was negotiating for fifty percent of the retirement accumulated during the man's marriage—not fifty percent of his entire career earnings. CP 122. He did not intend to include twenty-plus years of future retirement accumulation in the settlement agreement. CP 122. Similarly, Mr. Fugate believed he was negotiating a one hundred percent survivorship benefit of the amount encompassing Mr. Green's marriage, whereas counsel for Ms. Green, Jennifer Johnson ("Ms. Johnson"), thought he had agreed a one hundred percent survivorship benefit spanning his entire career. CP 121, 177–180.

As further established in Mr. Green's appellate brief, a court will not enforce an agreement if not all of the material terms have been addressed. *See Veith v. Xterra Wetsuits, L.L.C.*, 144 Wn. App. 362, 366–67, 183 P.3d 334, 337 (2008); *Evans & Son, Inc.*, 136 Wn. App. at 477,

149 P.3d at 694 (2006); *Lavigne v. Green*, 106 Wn. App. 12, 21, 23 P.3d 515, 520 (2001). Context is critical when determining the parties' intent as to these material terms; such context can include the parties' negotiation of terms outlined in their prior communications. *See Cruz v. Chavez*, 186 Wn. App. 913, 920, 347 P.3d 912, 916 (2015); David K. DeWolfe, Keller W. Allen, Darleen Caruso, 25 Wash. Prac., Contract Law And Practice § 5:8 (3d ed. 2017).

The context created by the informal communications between Mr. Fugate and Ms. Johnson demonstrates there was a fundamental misunderstanding and a lack of mutual assent between the parties as to the terms of their would-be settlement. On May 31, 2017, CP 70–73, Mr. Fugate and Ms. Johnson entered negotiations via e-mail and letters to each other to attempt to reach a settlement. At the time, trial was set for June 13, 2017. CP 42–44. Eleven emails were exchanged between Ms. Johnson and Mr. Fugate before the latter realized that the parties were not of the same mind in how Mr. Green's PERS 2 retirement account benefits would be divided between their clients. CP 60–70. Mr. Fugate and Ms. Johnson thought they shared each other's understanding of their settlement plans—until Ms. Johnson prepared a draft Property Settlement Agreement and e-mailed to Mr. Fugate for his approval, and he saw what she thought he wanted. CP 175. As established above, material terms were dramatically

different from what he intended—and thought she agreed to—from their communications. One material term, nonmodifiability of the settlement plan, was included seemingly out of thin air.

With this context in mind, an agreement did not form between the Greens. The material terms outlined in the parties' informal communications did not crystallize in a final and mutual understanding of offer, acceptance, and consideration. Their efforts were admirable, but by the final email between Mr. Fugate and Ms. Johnson, a meeting of their minds had yet to take place on the material terms. Consequently, the subsequent PSA was no contract at all.

**D. IF AN AGREEMENT DID TAKE PLACE, IT WAS AN AGREEMENT TO AGREE.**

At most, the Greens had an agreement to agree. This is “an unenforceable agreement that purports to bind two parties to negotiate and enter into a contract . . . with the intent that the final agreement will be embodied in a formal written document and that neither party will be bound until the final agreement is executed.” *Agreement to agree*, Black's Law Dictionary (10th ed. 2014). Agreements to agree are unenforceable as contracts in Washington State. *See generally P.E. Systems, LLC v. CPI Corp.*, 176 Wash. 2d 198, 208, 289 P.3d 638, 644 (2012). These include (1) an agreement to do something which requires further meeting of the

minds, and (2) an agreement with open terms to be supplied by another authoritative source. *Id.* at 208, 289 P.3d at 644.

Here, it is clear that if any agreement existed between Mr. and Ms. Green, it was merely an agreement to agree. Firstly, as further established below, the proposed agreement negotiated between the parties was inherently intended to be succeeded by a formal written document, to be executed by the parties. Mr. Fugate and Ms. Johnson's email communications were not intended to be binding until further meeting of the minds was established by signing the PSA. *See id.* Secondly, the PSA had a blank dollar amount where the amount of money Ms. Green would receive from Mr. Green's PERS 2 retirement account should be. *See* CP 91. This dollar amount was a term of the purported agreement to be supplied by another authoritative source. *See P.E. Systems*, 176 Wash. 2d at 208, 289 P.3d at 644. Both of these characteristics of the "agreement" Ms. Green touts as binding demonstrate that it was, if anything, an agreement to agree to future, more final terms. This Court should regard Ms. Green's supposedly final PSA as thus unenforceable.

**E. THE DECISION IN *MORRIS v. MAK* IS NOT COMPARABLE TO THIS CASE BECAUSE MR. GREEN'S INTENT TO BE BOUND BY THE ALLEGED AGREEMENT IS AMBIGUOUS.**

Ms. Green purports that *Morris v. Maki* is factually similar to the case at hand. Response Brief at 20 (citing 69 Wn. App. 865, 869, 850 P.2d

1357, 1359 (1993)). However, while the principle for which it stands is sound, the outcome of *Morris* is distinguishable from the facts before this Court. While the parties in *Morris* also exchanged letters which purportedly comprised their settlement agreement, those letters addressed all of the material terms and specific settlement issues between them in great detail. 69 Wn. App. at 869, 850 P.2d at 1360. Their negotiations specifically documented, *inter alia*, a \$110,000.00 cash payment, respective warranties and liabilities, and termination of the lease agreement, in a clear delineation of the points of their settlement. *Id.* at 870 n. 1, 850 P.2d at 1359–60. Further, each party in *Morris* had multiple previous drafts of their agreement to rely on in clarifying and conveying their intentions as they worked to finalize a settlement. *Id.* at 870, 850 P.2d at 1359.

In the current case, however, a critical word with respect to Mr. Green's PERS 2 retirement benefit distribution under the proposed settlement was not clarified until the PSA: "career." *See generally* CP 86–100. Even then, though, how much of a benefit Ms. Green would obtain throughout Mr. Green's career was nebulous: Ms. Johnson believed the benefit would cover Mr. Green's entire career, while Mr. Fugate understood it to only cover the time of their marriage during that career. CP 176–177. Additionally, the dollar amount of the retirement benefit Ms.

Green would enjoy was left blank. CP 91. As a result, other key terms of the PSA were never fully explained or understood between the parties. In particular, there was no specificity as to precisely how much Mr. Green would be paying Ms. Green, or when these payments would begin, these being based entirely on the percentages of “career” earnings which the parties did not actually agree on. *See generally* CP 90–96.

Furthermore, in *Morris*, the party claiming there was no settlement agreement had actually signed a letter confirming the settlement negotiations, and acknowledged a letter from his bank which stated that “[i]t is our understanding that you . . . reached a settlement, the outline of which is provided in a letter dated July 19, 1991.” 69 Wn. App. at 871, 850 P.2d at 1360. Mr. Green, on the other hand, did not sign or acknowledge a settlement agreement for a third party. Nor did he draft and sign a separate letter acknowledging it. Far from it, Mr. Green refused to sign the PSA when it was presented to him. Intent to be bound by the settlement negotiations was a clear fact in *Morris*—here, it is anything but.

**F. MS. GREEN MISCHARACTERIZES THE PSA AND ITS ROLE IN THIS CASE IN ADDRESSING THE MATERIAL TERMS OF THE PURPORTED AGREEMENT.**

Ms. Green asserts that Mr. Green’s “subjective interpretation of . . . material terms” of the alleged agreement formed by their correspondence prior to the PSA “is not a genuine dispute under the terms of CR 2A.”

Response Brief at 36. As already established in Sections B and C *supra*, Mr. Green has sufficiently raised an objective and genuine dispute as best he can under the unique circumstances leading to this appeal. This dispute casts the “final” material terms of the agreement at issue in serious doubt. In this particular portion of her response, however, Ms. Green makes several notable errors which are best brought to this Court’s attention in aggregate.

First, by insisting that “the informal writings constitute the agreement, not the . . . PSA,” Ms. Green fails to appreciate the inherent significance and function of a property settlement agreement. Property settlement agreements are a routine and critical part of divorce proceedings because they provide the parties a contract within which to definitively establish the distribution of their individual debts, assets, and interests. Ms. Johnson surely knew that no matter how many emails and letters she and Mr. Fugate exchanged, she would still eventually draft and prepare the PSA for his review and approval of the final material terms. And indeed she did—at which time Mr. Fugate promptly informed her that it did not accurately characterize what he had understood were the agreed terms of their settlement to be. A contract can certainly be formed by letters and emails, but in this case, the party seeking to enforce those informal writings (Ms. Green) knew a formal finalization of the material

terms still needed to be—and would be—drafted as a matter of course. And even then, the PSA itself was not finalized: Ms. Johnson called it a “draft,” and said she still reserved the right to make changes to it. CP 175. This is hardly the endorsement of someone who considers their agreement already set in stone.

Secondly, despite Ms. Green’s misgivings, *see* Response Brief at 36, it is not problematic for Mr. Green to rely upon law which presupposes the existence of a contract. Mr. Green does not dispute the parties at least intended to come to an agreement, or had an agreement to agree, and they did correspond with each other at length to this end. However, the issue at hand is whether a full and final meeting of the minds on the material terms of this potential agreement took place—and it did not. In any event, it is procedurally permissible for Mr. Green to offer such law in an alternative argument without dulling his own claims.

Lastly, as to “constru[ing] it against the drafter,” Response Brief at 36 (citing *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 713, 334 P.3d 116, 120 (2014)), it is unclear what Ms. Green means when she says “Mr. Fugate was the drafter” of the terms Mr. Green contests, *id.* If she means the parties’ informal writings, those were “drafted” collaboratively. Each party may have been the first to individually propose certain terms, but there was no singular “drafter” of an entire agreement. If

she means the PSA, she not only contradicts her argument that the informal writings are the true agreement but contradicts a critical fact in the case: It is a matter of record that counsel for Ms. Green drafted the PSA and sent it to counsel for Mr. Green. *See* CP 175. Indeed, that is precisely why Mr. Fugate was so alarmed when he reviewed the PSA: he had no part in drafting it. The ambiguities and unagreed-to terms in the PSA should be construed against Ms. Green instead, and found to be invalid and unenforceable.

**G. THIS COURT SHOULD CONSIDER THE ASSIGNMENT OF ERROR RELATING TO THE MOTION FOR RECONSIDERATION.**

Ms. Green argues that this Court should not consider Mr. Green's assignment of error to the trial court's "failure to grant summary judgment" because he never argued it. Response Brief at 37. However, as clearly indicated in Issues Pertaining to Assignments of Error #1 and #2, the error of the judge below in denying Mr. Green's Motion to Reconsider the Decision and Order of December 5, 2017 was incorporated into the arguments that a valid settlement agreement was not reached and a CR 2A agreement could not be imposed. Appellant's Brief at 3-4. Ms. Green cites nothing for the implication that the phrasing and presentation of an issue pertaining to assignments of error must be identical in the argument

section of an appellant's brief. This Court should therefore consider this Assignment of Error.

**H. MR. GREEN SHOULD BE AWARDED ATTORNEYS' FEES.**

Mr. Green should be awarded his attorneys' fees and costs on this appeal. *See* Rule of Appellate Procedure ("RAP") 18.1. Where a statute or contract allows for recovery of attorneys' fees at the trial court level, the appellate court has inherent authority to award them. *See Standing Rock Homeowners Ass'n v. Misich*, 106 Wn. App. 231, 247, 23 P.3d 520, 529 (2001); *Brandt v. Impero*, 1 Wn. App. 678, 683, 463 P.2d 197, 200 (1969). In particular, upon appeal from a marital dissolution proceeding, this Court may "order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs." RCW 26.09.140

Mr. Green is appealing from a marital dissolution proceeding, asking this Court to reverse the trial court's decision and vacate the PSA. The award of attorney fees is authorized by RCW 26.09.140 in these circumstances. An award of his attorneys' fees and costs on appeal under RAP 18.1 is hence appropriate. Ms. Green claims that Mr. Green is responsible for her attorneys' fees and costs under Section VIII.A of the PSA. Response Brief at 38–39. That section states that a party is responsible for said fees and costs if he or she will "claim, assert, or

demand . . . any relief different than is embodied in this agreement [or] . . . assert . . . any claim or demand which is inconsistent or contrary to the terms hereof, except in the event of fraud or misrepresentation.” CP 97. The Court should consider this section inapplicable to the present circumstances for three reasons.

First, Mr. Green has not sought relief “different than is embodied in” the PSA, nor has he “assert[ed] . . . any claim or demand which is inconsistent or contrary” to its terms. *Id.* Rather, more broadly, he disputes the validity of the PSA as a whole. If anything, it is Ms. Green whom he seeks to prevent from obtaining relief different than was embodied in the agreement he thought they had. Secondly, even if the relief Mr. Green seeks is contemplated by Section VIII.A, it is exempt because there was misrepresentation in Ms. Green’s final presentation of the PSA. As established above and in Mr. Green’s appellate brief, the PSA did not accurately represent mutually intended terms of the parties’ settlement agreement. Lastly, Ms. Green should not be allowed to invoke Section VIII.A because it is at odds with the rest of her argument. Throughout her brief, Ms. Green argues that it is not the PSA which is the parties’ alleged settlement agreement but rather their letter and emails leading up to it. *See generally* Response Brief 14–37. In that correspondence, the most the parties ever proposed was that each would

be responsible for their own attorneys' fees. *See* CP 66, 68, 165, 167. At the very least, then, even if this Court finds that Mr. Green cannot recover his attorneys' fees, Ms. Green should not be able to recover hers either.

Ms. Green does accurately cite *Kruger v. Kruger* for the principle that an award of attorneys' fees "must balance the needs of the spouse requesting them with the ability of the other spouse to pay." 37 Wn. App. 329, 333, 679 P.2d 961, 963 (1984); *see* Response Brief at 38. However, it is Mr. Green, not Ms. Green, who has the most need of compensation for his attorneys' fees and costs. Mr. Green has spent over six months and thousands of dollars to bring this appeal. These expenses would not have been necessary if Ms. Green had not incorporated her assumptions about the terms of their agreement into the PSA and improperly tried to hold Mr. Green to it. Mr. Green has also incurred further expenses stretching back to Ms. Green's initiation of the underlying divorce proceedings in December 2016. Thus, for the reasons established above, Mr. Green's recovery of his reasonable attorneys' fees and costs from Ms. Green remains appropriate.

## II. CONCLUSION

For all of the reasons aforementioned, and established in Mr. Green's appellate brief, the decision below should be reversed and remanded to the trial court. Ms. Green's assertion that this Court should not hear a myriad of issues has no basis because Mr. Green properly raised and argued them before the trial court. Further, Ms. Green's claim that she and Mr. Green entered into a valid and binding property settlement agreement is erroneous. The letters and emails sent between the parties as part of their post-settlement conference negotiations blatantly contradict this stance. Black-letter elements of contract formation simply did not take place; the parties did not have a meeting of the minds sufficient to produce either objective acceptance of a mutually understood offer or an informal CR 2A agreement. At most, with essential terms missing or left for later determination, an unenforceable agreement to agree was formed. Mr. Green never intended these communications to be the final agreement. Hence, this Court should only consider the driving principle of *Morris v. Maks*, not its final decision.

In particular, the interpretation of the parties' purported agreement with respect to division of Mr. Green's PERS 2 account retirement benefits argued by Ms. Green is unreasonable and unfair to Mr. Green. Mr. Green has many years of gainful state employment in his future, but

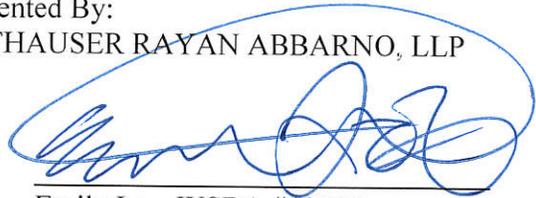
he also needs to be able to reasonably plan for his retirement. It is utterly implausible that he ever intended to give his ex-wife not only fifty percent of his community retirement benefits but fifty percent of his future career's *separate* retirement benefits, on top of a one hundred percent survivor benefit. This will cost Mr. Green tens of thousands of dollars to which he did not even knowingly agree, and never would have if he knew what the "final" terms of the PSA would be. The subsequent refusal of Mr. Green and Mr. Fugate to sign the PSA or agree to its terms, supported by sworn statements affirming a dispute as to the terms, should defeat any notion that there is no genuine, objectively demonstrated dispute of material fact in this matter.

In construing the PSA against Ms. Green, the drafter, the explicit lack of final acceptance by Mr. Green of Ms. Green's offer, the blank terms in the agreement, and Mr. Green's immediate dispute of the terms compel a single conclusion: Mr. Green and Ms. Green do not have an enforceable settlement agreement under either CR 2A or basic contract law. This Court should deem the PSA unenforceable, reverse the decision and Order of the judge below, and remand the case for trial, with an award to Mr. Green of his attorneys' fees on appeal.

Respectfully submitted this 18th day of March, 2019.

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on March 18, 2019, I served this document upon the Appellee, GINA R. GREEN, by leaving a copy of the same with the receptionist for her attorney, JENNIFER BAYER JOHNSON of JBJ Law Group (jennifer@jbjlaw.org), at 106 West Pine Street, Suite 9, Centralia, WA 98531.

Signed at Centralia, WA on March 18, 2019.

  
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Kristan McConnell, Althausen Rayan Abbarno, LLP

**ALTHAUSER RAYAN ABBARNO, LLP**

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**Appellate Court Case Title:** In Re The Marriage of Thomas F. Green, Appellant v Gina R Green, Respondent  
**Superior Court Case Number:** 16-3-00446-8

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