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No. 54010-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MARINA NICOLE TURNER,

Respondent,

v.

RANDOM ERIK VAUGHN,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY CAUSE NO. 16-3-00665-4
THE HONORABLE KATHRYN J. NELSON

BRIEF OF RESPONDENT

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I. INTRODUCTION

Bad faith, intransigence, obstructionism, and outright intentional misrepresentation only begin to describe the level of gamesmanship and psychological destruction perpetrated by Appellant Random Vaughn (“Vaughn”) against Turner throughout this case--up until this very day.

Appellant, Vaughn’s mockery of this court system and utter lack of regard for authorities, court orders and basic moral ethics is evidenced repeatedly over the course of this four-year court record. You will see there were over 70 hearings noted before the Superior Court. Most of these hearings were unnecessary and caused by Vaughn’s bad faith and intransigence. (CP2 367) Vaughn continues his mission by attempting to relitigate his fabrications on appeal once again.

In addition to his removal of over \$1 million from bank in violation of the restraining order the day prior to the return hearing, here is a simple list if egregious actions by Vaughn:

Firstly, Right after Vaughn was ordered to pay Turner \$9126 per month in draws (March 17, 2016) during the pendency of this matter Vaughn fired his lawyers, hired a new lawyer and demanded that the Court grant him primary custody of the their two boys Dean age 2 years and Hank age 3 months. See Motion for Temporary Orders and Declaration of Vaughn in Support

filed in Consolidated Pierce County Case Number 16-3-00747-2 on April 26, 2016. He filed therewith proposed child support worksheets alleging negative income over almost \$7000 per month and demanded that Turner pay him almost \$500 per month in child support. He further proposed a parenting plan that would give her only 4 overnights with their infant child and two-year old son every two weeks, even though she was the primary parent by far. This was purely a retaliatory filing by Vaughn. See proposed worksheets and proposed parenting plan filed by Vaughn in cause 16-3-00747-2 on April 25 and April 26, 2016 respectively.

Secondly, the night Turner was granted an order allowing her to relocate with the children to Los Angeles from Puyallup, Vaughn took his new girlfriend to Turner's apartment, entered the locked gate, stole Turner's car that had been packed with all her essential belongings for the relocation (including Turner's purse with all her identification and credit/debit cards) and then sold the car to his girlfriend for ten dollars. RP2 76. This caused horrific stress and turmoil for Turner who had to convince the airline to allow her to board without identification. (*Id.*) Vaughn ended up paying over \$11,000 in sanctions for this stunt and his refusal to timely remedy it. (RP2 177)

Thirdly, Vaughn filed financial declarations in support of motions to reduce his child support obligation on July 20, 2017

and March 3, 2018 alleging under penalty of perjury that his net income was \$1615 and \$2324 per month respectively. (EX 217 and 218) Shockingly, counsel for Vaughn in his opening statement argued that Vaughn currently had no income. (CP2 133) The trial court found Vaughn's gross income to be \$150,000 *per month* retroactive to May 2016 and Vaughn intentionally chose not to appeal this finding. (Emphasis added).

These simple examples are a mere tip of the iceberg when it comes to Vaughn's actions throughout this case.

You will see throughout Vaughn's brief that he either ignores evidence, denies that his own testimony was found to be not credible, or improperly disregards adverse evidence with no articulable legal ground for doing so. Vaughn alleges the trial Court erred in considering "expert" testimony from a lay person that Vaughn's marijuana collective received more cash than credit/debit card payments. But, Vaughn *himself* testified to this during trial. (RP2 734)

Vaughn's argument that Turner suddenly as of April 19, 2019 was now only seeking a list of employees and some cancelled checks and not full disclosure of his massive business interests and full answers and production to the interrogatories and requests for production makes no logical sense whatsoever and is made in bad faith. (Opening Br. App. at 20) This is confirmed by the

declaration of counsel for Vaughn sworn and dated May 27, 2019 in response to Turner's motion for default and to strike pleadings. Counsel's responsive declaration was filed with the trial court and nowhere therein alleges that all Vaughn had to do to satisfy the Court's orders to compel discovery was provide a list of employees and some cancelled checks. This is analogous to Vaughn suddenly producing a newly manufactured "separation agreement" purportedly signed by Turner (her signature was forged on it) when he finally realized she was entitled to her share of their assets.

Vaughn intentionally failed to include the most basic of clerk's papers by failing to produce the underlying petition which began this action in violation of RAP 9.6. (CP2 489-497, 503-504, 507-508) There were thousands of pages of evidence, but leaves out the majority to include almost every single exhibit referenced in the trial court's findings. (*Id.*, CP2 359-376).

This Court should uphold the trial court and further sanction Vaughn for bad faith and intransigence and award fees for a frivolous appeal.

II. STATEMENT OF THE CASE

As a result of the first trial, the trial court found the parties were in a Committed Intimate Relationship ("CIR") from at least

October 2011 through December 2015¹. (CP2 360) Vaughn appealed this finding and lost. The parties have two children together with their first son being born December 20, 2013. (RP2 140, 151)

Turner was a valedictorian of her high school class and completed the cosmetology program at the Aveda Institute in Tucson, Arizona and completed the massage therapy program at the Aveda Institute in Denver, Colorado. (RP2 141) She studied in Tokyo, Japan and New Delhi, India through the Aveda Institute Program. (*Id.*) Turner started her career in the beauty, personal care and massage industry in the Los Angeles area. (CP2 368) Turner moved to the Seattle area to work for the editorial hairstylist with Aveda in 2011 when she was 19 years old. (RP2 142-143)

Vaughn has a degree in finance from Western Washington University and took additional classes for accounting. (EX2 272) Vaughn's father is a CPA and owned his own practice for many years. (EX2 272) Vaughn also worked at a bank. (RP2 503)

¹ Respondent's Brief remains consistent with Appellant's Brief in that the transcript, clerk's papers, and exhibits will be listed RP, CP, EX for the first trial and RP2, CP2 and EX2 for the second trial.

When the parties met in 2011, Vaughn was running a video production company in Everett, Washington. (RP 34) Turner was working at a spa in Bellevue and for Aveda. (RP 33)

Shortly after the parties met in 2011, Turner cultivated Vaughn's interest in the cannabis business by introducing Vaughn to her friend working in the cannabis industry. (RP 35-37, RP2 145) Since that introduction, Vaughn shifted his focus and research to the marijuana industry and began growing plants and purchasing lights. (RP2 145)

In February 2012, Vaughn started their first marijuana enterprise called "Your Own Garden." (RP 226)

On February 10, 2012, the parties obtained medical marijuana cards together. (RP2 147) Turner never consumed marijuana but obtained the medical marijuana card solely so that Vaughn could legally grow more plants. (RP2 147) In December 2012, Your Own Garden was shut down because it was unsuccessful. (RP 242)

In 2014, Vaughn's various cannabis businesses to include Pacific Green Collective became very successful and were generating hundreds of thousands of dollars per month in revenue. (EX2 422, CP2 361)

Throughout their relationship, Vaughn would travel very frequently back and forth from California to Washington because the marijuana business was in Washington and Turner's career was in Los Angeles. (RP2 155)

The parties participated in a marriage ceremony on the beach in Thailand in the Spring of 2013. (RP 102) The parties agreed Turner would be a stay-at-home mom after their first son was born in December 2013 and he would be their financial provider. (RP2 155)

In addition to the introduction and medical card, Turner took substantial steps to assist Vaughn in growing his cannabis businesses by agreeing to let him use her social security number to accept credit and debit card transactions through Square, Inc in 2014. (CP2 368, RP2 147-149, 157-158, 724)

Vaughn stated he was shut down at least six times by Square due to bank regulations and approached Marina about running the funds through a Square account in her name. (RP2 724)

The parties shared a joint bank account through Chase at the beginning of their relationship, which was used for household expenses. (RP2 158) The square funds were deposited into this

joint bank account. (RP2 726) Vaughn, with his Bachelor's Degree in finance and background at his father's CPA firm, is alleging that he told Turner not to spend these funds as they were proceeds of Pacific Green Collective, but had this business income deposited in a personal, joint bank account and "on occasion" Vaughn transferred some money to his personal account by wire transfer that was used for Pacific Green. (RP 573-574, RP2 725, Br. of App at 12) Turner having historically used this bank account for household expenses and Vaughn having regular access to the account to transfer funds incredibly claims "he told her she was not to take that money." *Id.*

Turner testified she was told they did not have a budget and that she was never told not to touch the funds. (RP 83-84) Vaughn had full equal access to this account, and it is simply not credible that he did not know about Turner's spending out of that account. In fact, Turner's spending was very easy to track to the penny because she was the only one with a debit card and check book linked to that account and all her transactions were by debit card or check. Vaughn would have easily and routinely seen those transactions.

In 2014, Turner received a 1099 from Square for \$398,455. (EX2 102)

In 2015, Turner received a 1099 from Square for \$2,227,463. (EX2 364)

Vaughn hired CPA Shelley Drury as an expert witness to generate a report alleging that Turner took \$117,292.79 in unauthorized withdrawals and \$97,741.25 in unauthorized checks out of their personal, joint bank account from the funds deposited by Square. (RP2 542-543) Turner freely admitted all of these withdrawals from the outset of the case when she petitioned the Court for a continuation of her average monthly draw of \$9140. The Court granted Turner's request and then Vaughn filed a retaliatory demand for primary custody of their infant and toddler. (EX 35)

CPA Drury affirmed that her reports and opinions were only as good as the data provided by Vaughn and that Vaughn's. (RP2 572) CPA Drury also testified, "Their [Vaughn's] accounting records are unreliable." (RP2 619)

During her testimony, CPA Drury also acknowledged:

"Q. You reviewed a number of bank accounts associated with Pacific Green Collective, correct?"

A. Yes, but they were only associated with Pacific Green Collect -- I only knew they were associated with Pacific Green Collective because that's what Mr. Vaughn told me. Those accounts were primarily in the name of Random Vaughn personally."
(RP2 575)

"Q. What did Mr. Vaughn tell you about Killer Bee Concentrates?"

A. Nothing that I can recall. I don't even know what that is.”
(RP2 575)

“Q. Why is a cash receipts journal important?”

A. Because it's our only way to track cash. Cash -- this is a particularly complicated case because everything is in cash, and unless it's deposited into a bank account, that cash is very difficult to track.”
(RP2 579)

“A. That's a little bit outside the scope of what I was asked to do. I was asked to summarize income to personal income. I wasn't asked to summarize business income.”
(RP2 580)

In 2015, Vaughn purchased Killer Bee Concentrates from Nathan Webb. (EX2 296, 297, CP2 361) Pursuant to their agreement, Mr. Webb was to produce at least 80 pounds of concentrate annually, which Vaughn sold in ¼ gram increments at his retail locations. (EX2 96, CP2 361)

In 2015 into 2016, Vaughn sent tens of thousands of dollars to China to purchase equipment to manufacture (extract) marijuana concentrates. (EX2 49, CP2 361)

In December 2015, the parties separated. (CP2 360)

Vaughn's farce continues when he claims that he removed \$63, 000 out of their joint Chase account on February 19, 2016 once he suddenly, after two years, “became aware Turner was taking significant amounts of money out” of the joint Chase account. (RP2 733-734) In truth, Vaughn decided to remove all of the funds (except

\$1,044) without notice, after separating from Turner to be with another woman, leaving Turner with \$1,044 to live off of. (EX2 264, CP2 362)

On February 23, 2016, Turner filed a petition for termination of the CIR and Motion for Ex Parte Order. (EX2 201, 463, CP2 362) On that date, the trial court ordered Vaughn to return the \$63,000 to the account he removed, and ordered standard property restraints, which remained effective until March 17, 2016. (EX2 365, CP2 362).

On March 16, 2016 (the day prior to the hearing for temporary orders scheduled by Turner) in violation of the restraining order, Vaughn transferred, removed, concealed and disposed of over \$1,128,600 from the bank and failed to notify Turner of these financial transactions. (CP 362, EX2 263 at 01093 and 01136-01140). These funds were never credibly accounted for and remain missing. (CP2 362)

At the hearing on March 17, 2016, the trial court ordered “Mr. Vaughn is restrained and enjoined from allowing the savings account which contains more than \$1 million dollars to drop below \$625,000 and all past and future proceeds shall be ran through accounts at JP Morgan Chase bank only and must be associated with Mr. Vaughn’s identification. Mr. Vaughn shall only use these funds

in the due course of business or for the necessities of life and shall inform counsel for Ms. Turner, through his counsel of any extraordinary expenditures.” (EX2 366, CP2 363) Vaughn was personally present at this hearing and did not tell the court that he had already removed the funds from Chase bank the day prior. (*Id.*)

The trial court found Vaughn in contempt of court on December 6, 2016 for removing the \$1,078,000 in community funds from the Chase checking account which was solely in his name on March 16, 2016, in violation of the court order of February 23, 2016. (CP2 498-502) These funds were originally transferred over time from the joint account to the Chase account solely in his name.

On March 14, 2016, Vaughn was also ordered to pay Turner \$9,140 per month in draws. (EX2 366, CP2 363) Despite having hundreds of thousands of dollars at his disposal at all relevant times, he intentionally and in bad faith refused to pay the court-ordered draws to Turner. (*Id.*) A civil bench warrant was issued on June 21, 2016. (CP2 452) Vaughn continued to refuse to comply and it was only until he was ordered into custody on October 27, 2016 that he paid. (EX2 385)

On August 15, 2016, Vaughn was ordered to provide a tracing of the \$1,128,600 he removed from Chase bank on March 16, 2016 with the bank, routing number and account number and

who the account holders are. (EX2 339) On January 19, 2017 Christina McCormick (an employee of Vaughn) filed a declaration with a purported “accounting” attached. This was proven to be incorrect and false on many different levels.

At trial, Vaughn testified regarding a portion of these funds removed and secreted in violation of the Court’s orders as follows:

“Q. Okay. So you testified yesterday, also, going through the accounting provided by Christina McCormick about a \$200,000 loan out of that million dollars you took out of the bank. Have you provided any documentation of this alleged loan whatsoever?”

A. No. I believe those records were stolen.

Q. Those records were stolen?”

A. Yeah.” (RP2 885-886)

The accounting provided by Vaughn’s business manager, Christina McCormick on or about January 19, 2017 is demonstratively false. (EX2 226, 378) The accounting did not line up with the bank account statements whatsoever to include amounts and dates. (EX2 378, RP2 377-381) Vaughn claimed he did not know where those funds went, but the bank records reflect his withdrawals in the form of cashier’s checks by Vaughn. (EX2 378)

Additionally, on October 27, 2016, Vaughn testified under oath to Commissioner Dicke that he had “a million dollars sitting around in cash.” (EX2 353 at 11-12)

On August 15, 2016, Vaughn was ordered to pay his proportional share of work-related daycare. (EX2 339) Despite having hundreds of thousands of dollars at his disposal at all relevant times, he intentionally and in bad faith refused to pay the court-ordered daycare to Turner for the time period of August 2016 through February 2017. The daycare was not paid until he was facing incarceration or until his attorney was ordered to pay the daycare out of funds held in trust. (EX2 339, CP2 364)

On June 21, 2016, the court issued a warrant for Vaughn's arrest due to his refusal to appear for the hearing for contempt for intentionally and in bad faith failing to tender the \$9,140 per month to Turner after being ordered to appear. (EX2 452) The warrant provided Vaughn could post \$25,000 bail to avoid incarceration. (EX2 385)

On August 23, 2016 Turner was granted a court order allowing her to relocate from her apartment in Puyallup with the children to California. (EX2 420) Shortly after midnight into the 24th of August, Vaughn and his girlfriend Alyssa White entered Turner's gated apartment complex and stole her car that was packed with her and the children's personal belongings in preparation for her departure to California. (RP2 176) The trial court found this to be intransigence by Vaughn. (CP2 365)

Vaughn then intentionally and in bad faith sold the stolen vehicle to his girlfriend Alyssa White for \$10. (EX2 346) The trial court found this to be intransigence by Vaughn. (CP2 365)

At great inconvenience and expense, Turner's mother had to fly to Washington from New Mexico and assist Turner in flying the children to California and getting through security at the airport with no identification and no credit/debit cards because they were in her purse in the car that Vaughn stole. (RP2 176-178)

Vaughn intentionally and in bad faith refused to return Turner's debit card until it was discovered in his wallet at his deposition on November 7, 2016. (EX2 272)

Vaughn was sanctioned over \$11,000 due to his refusal to return the car pursuant to court order to the correct location, obtain insurance and California license plates. (EX2 366, CP2 365) Vaughn did not appeal this sanction.

Vaughn admits he received cash throughout the entirety of the collective. (RP2 703) When asked if he had any records showing how much cash came into Pacific Green Collected in 2013, 2014 and 2015, Vaughn's response was, "I don't believe that those records still exist." (RP2 704) Vaughn admitted that Pacific Green Collective received cash "donations" (which is industry code for

payments) during its whole existence. (RP2 703) He also admitted that most of Pacific Green's expenses (including purchasing the marijuana inventory to be sold) were paid by the allegedly undocumented cash receipts. (RP 704) Most significantly, Vaughn testified that the "big majority" of Pacific Green's revenue was paid by cash [versus Square]. (RP 734).

Vaughn intentionally withheld financial information when he purposefully showed up to depositions without records, and regularly "did not know" the answers during his examination. (RP2 842, EX2 272, 273, 274) The record will show Vaughn's repeated acts of intransigence, bad faith and dishonesty throughout the proceedings and during trial. (CP2 359-376)

"THE COURT: Well, shouldn't he have explained those things when asked in the deposition excerpts that I was provided?"

MR. DICKINSON: I don't believe he was doing that at the time the depositions were taken.

THE COURT: But he has an obligation, then, to update the interrogatory answers with new information not disclosed.

MR. DICKINSON: That wasn't disclosed. I knew nothing about it until that was -- that was provided and --

THE COURT: Well, but that's not -- I'm not questioning the attorney's role here. It's your client's role, and I'm sure you explained to your client the

penalties for not participating fully in our discovery process.

MR. DICKINSON: Well, and he did provide it, which is why Mr. Benjamin is now aware of it. So that was provided, and along with checks and things.

THE COURT: You forwarded a new set of interrogatories with every answer updated?

MR. DICKINSON: We provided the information Mr. Benjamin asked for when he asked for information. He asked for contracts, and that's when we got that. We didn't do a new set of updated answers to interrogatories." RP2 103-104.

When asked very basic questions on cross-examination, Vaughn continued to "not know" the answers to questions previously asked in depositions and discovery requests:

"Q. Also, at your deposition of November 26th, 2016, when you were asked where Dank's Wonder Emporium, LLC, got its capital to purchase over \$200,000 worth of inventory of marijuana and glass, you answered that you would have to check with Dani, correct?

A. Yeah, because there's books on that.

Q. Okay. So have you checked with her?

A. No, but I can." (RP2 870)

"Q. How do the funds get in the bank account?

A. Through ATMs.

Q. And where's all that financial information?

A. That's -- we've hired a new bookkeeper company, and we are going through it meticulously." (RP2 870)

"Q. Is this the guy that pays you 500 bucks an hour?

A. Well, his company is contracted for billable hours

to agreed-upon price of \$500 an hour for Original Investments.

Q. Where is all that money?

A. That's in the books that we are working on.

Q. So Shelley Drury never had that information, did she?

A. That was after, like, months and months after did anything come of that from her audit. Her audit was a cutoff date of December 2017.” (RP2 871-872)

“A. Once again, I didn't create this document, and I didn't sign it, but that is what it says.

Q. So sir, do you own 6906 Martin Way East, the building?

A. This document says that Original Investments has an ownership interest in 6906 Martin Way East.

Q. Do you agree with that or have no idea?

A. What I've been explained by accountants and attorneys is that entities are of themselves, and so it is my understanding, just that I believe that Dani also testified, that 6906 Martin Way East is its own entity and owns the building.

Q. So sir, you're claiming no ownership interest in that building, correct?

A. I'm not claiming –” (RP2 879)

“Q. Sir, do you own that building or not?

A. I do not believe that I personally own 6906 Martin Way

Q. And you'd have no problem if the Court awards it to Marina then, correct?

A. I believe that there would be an issue with that because there is a loan on the building and 6906 Martin Way East, LLC, owns the building.

Q. But sir, you did not sign the loan. You know nothing about the loan. You had nothing to do with the loan, so why would you care?

A. Because it was -- the loan is with Pacific Green Collective to 6906 Martin Way East.” (RP2 880-881)

During trial when specifically asked if basic information was provided that was requested, these were his responses:

“Q. Even as of this date, you've not provided any financial statements for Pacific Green Collective, have you?

A. I was asking for the last question.

Q. I'm moving on. Have you given us a balance sheet?

A. For –

Q. Pacific Green Collective?

A. No, I do not believe so.

Q. An income statement?

A. No.

Q. A profit and loss?

A. Nope.

Q. Cash receipts journal?

A. Nope.” (RP2 842)

Throughout the trial that Vaughn attempted to use his business entities as a shield to claim none of the money was his because he was not the owner of any of those companies. (RP2 837-838)

However, Vaughn filled out a rental application for prospective landlord Annette Comer for a commercial property in Auburn, Washington to place a branch store of Pacific Green Collective. (RP2 306) He also filled out and signed a financial

application to potentially purchase a commercial building from Annette Comer. In those applications, he declared he was the one hundred percent owner of Pacific Green Collective and earned an annual salary of \$250,000 and had a net worth of \$500,000. (RP2 307-208, EX2 375) Landlord Annette Comer testified that Vaughn identified himself as self-employed and told her he was the sole owner of Pacific Green Collective. (RP2 307)

The trial court made 82 specific findings, which include:

(49) This court finds that Mr. Vaughn's testimony regarding personal expenses is not credible. Mr. Vaughn's bank and VISA records reflect very little personal expenses leading this court to believe he is paying for a majority of his expenses in unreported cash.

(50) The court specifically finds that Mr. Vaughn intentionally, in bad faith fails to keep standard books and financial reports for the purpose of hiding his income for establishing child support as well as to evade taxes and fees at the local, state and national level.

(51) There is an intentional lack of transparency to Mr. Vaughn's business dealings. The court finds that Mr. Vaughn intentionally, in bad faith uses a web of layered LLC's for the purposes of hiding his income to wrongfully minimize his child support obligations as well as to evade taxes and fees at the local, state and national level.

(52) Mr. Vaughn's own expert CPA Shelley Drury testified that the accounting records for Dank's Wonder Emporium, LLC were "unreliable" and that her reporting is only as good as the information and documentation provided by Mr. Vaughn. This court finds that Mr. Vaughn intentionally failed to supply Ms. Drury and Ms. Turner with all business and financial records, to include cash receipts journal. (CP2 366)

Vaughn's counsel stated, "The thing that's interesting about a medical retail marijuana store is that every single dime has to be accounted for. You pay with cash, but every dime of that cash has to be accounted for." (RP2 131) Vaughn has a degree in finance and experience in working at his father's CPA firm. (EX2 272)

Mere days prior to trial, Vaughn produced unsigned draft tax returns that failed to disclose the cash he collected from his medical marijuana businesses. (Br. of App. at 29)

Astoundingly, Vaughn never produced a single document showing even one dollar in cash receipts from Pacific Green Collective. (CP2 361) Despite holding a degree in finance and having worked in a CPA firm and his father being a CPA and a partner in a CPA firm, Vaughn never submitted a single profit and loss state, income statement, balance sheet or cash receipts journal for Pacific Green Collective.

Vaughn's Certified Public Accountant, Dani Espinda, who has been a CPA for 20 years testified that "98 percent of my niche is in marijuana." RP 627. Espinda went as far as acknowledging some marijuana collectives (as differentiated from retail) are 100% cash:

“Q. Okay. So she was a woman that ran a marijuana collective that testified earlier in this case, and she indicated that, at her collective, it was about 60 percent in cash and 40 percent in debit and credit cards. What do you think of that, if 98 -- that testimony -- if 98 percent of your business is marijuana business?”

A. That doesn't surprise me. The only -- my only comment about that is that not all collectives would use credit cards or accept credit cards.

Q. Right.

A. So it --

Q. They'd be all cash, then?”

A. Right.” (RP2 677)

Witness John Douville who had been in the marijuana industry for three to four years he had only ever seen marijuana business deal in cash only. (RP2 211-212) Douville and Vaughn worked together in the cannabis industry with Vaughn purchasing Douville's cannabis. (RP2 208-209)

Witness Christine Morris testified that Vaughn purchased one of her marijuana dispensaries in August 2014 for \$17,000. (RP2 446-449) She further testified that most of the transactions were cash, but she conservatively estimated 60% cash and 40% debit/credit card. (RP2 449)

Vaughn had his CPA Dani Espinda testify about “draft” tax returns for 2014, 2015 and 2016 based solely on the information provided by Vaughn. (EX 382, 422, 423, RP2 663)

Witness Espinda states:

“Q. If he decided that he wanted to file these tax returns with the IRS, would you sign them as prepared?”

A. No, no.

Q. Why not?”

A. Because I haven't -- I haven't gone through the normal process that I would to verify income and verify expenses and, you know, seek point of sale reports and look over, you know, the cash disbursements journal. All of those things come into play with that.” RP 662

“Q. Well, have you ever seen any records regarding Pacific Green Collective other than a 1099?”

A. No.

Q. Have you seen a profit and loss?”

A. No.

Q. A balance sheet?”

A. No.

Q. An income statement?”

A. No.” (RP2 663)

Vaughn admits that the gross income figure on those tax returns would be the minimum he would have to pay taxes on because they were only the Square funds. (RP2 736) In 2015, he earned a minimum of \$2,227,463. (EX2 423) This includes no cash receipts whatsoever. (RP2 738-739)

After hearing testimony from all witnesses and reviewing all exhibits, the trial court judge determined Vaughn was not credible and intentionally engaged in intransigence and withholding of information. (CP2 359-376) It properly granted Turner's motion for

default, exclusion of testimony, exhibits, supporting or opposing claims or defenses, and striking Respondent's pleadings. (CP2 335)

The trial court properly and conservatively divided the community-like assets and debts given the circumstances described herein. (CP2 359-376) Vaughn was awarded his marijuana business entities that begin during the CIR, which profits millions of dollars every year. (CP2 395, EX2 423)

One of the most significant points is that the trial court found Vaughn has a gross monthly income of \$150,000 per month. This is effectively a net monthly income because Vaughn does not file income tax returns listing his true income. He did not appeal the Court's finding as to his monthly income.

III. ARGUMENT

A. This Court Should Uphold the Trial Court's Decision to Grant Default, Contempt and Order to Strike Because Substantial Evidence Supports the Trial Court's Findings of Fact, and It Faithfully Applied those Facts to the Law (Despite Default, He Was Still Awarded the Most Valuable Assets by Far—Businesses Giving Him a Conservative Gross Income of \$150,000 Per Month)

A party may not simply ignore or fail to respond to discovery request—they must answer, object, or seek a protective order. CR37(d); *Magaña v. Hyundai Motor America*, 167 Wn.2d 570, 584, 220 P.3d 191(2009). “A party's disregard of a court order without reasonable excuse or justification is

deemed willful.” *Magaña*, 167 Wn.2d at 584 (quoting *Rivers*, 145 Wn.2d at 686-87). A trial court need not tolerate deliberate and willful discovery abuse. *Magaña*, 167 Wn.2d at 576. If a party fails to comply with an order to compel discovery, a trial court may impose sanctions under CR 37. A trial court has broad discretion as to the choice of a sanction for a party’s violation of a discovery order. *Washington State Physicians Ins. Exchange & Ass’n v. Fisons Corp*, 122 Wn.2d 299, 339 (1993).

On May 9, 2018 (a year before the actual trial), the Court ordered “Mr. Vaughn shall update any and all Interrogatory Answers/Requests for Production pertaining to financial/business/Income issues or whether he has fathered any other children by noon on Friday, June 1, 2018.” (EX2 230)

Vaughn argues that on April 19, 2019 Turner suddenly lost interest in his requirement to update all the interrogatory answers and requests for production of documents and narrowed her request to a list of employees and some cancelled checks. (Br of Appellant, page 20) This is simply not credible or logical from any perspective. Counsel for Vaughn did not even make this argument in his Declaration in Response to Turner’s Motion for Default signed and filed on May 28, 2019. If that was actually the case, counsel for Vaughn certainly would have made that argument then.

What actually happened is that counsel for Vaughn was

complaining that the requested employee records contained social security numbers and other private information that needed to be excised before being sent over to Turner. (RP2 52) To eliminate Vaughn's excuse for any more delay, counsel for Turner agreed to only accept a list of employees and not the actual records, to allow Vaughn to then be able to fully supplement his discovery responses and this was documented in the court order of April 19, 2019. (RP2 52, 57)

Similarly, counsel for Vaughn was complaining that Vaughn would have to obtain all the cancelled checks previously supplied in support of the deposition of Vaughn's expert witness CPS Shelley Drury and that would delay the responses. To eliminate that excuse, counsel for Turner clarified that Vaughn would not have to provide any cancelled checks already provided. (PR2 53, 57)

This whole argument is dishonest, quite frankly. It is made in bad faith and is intransigence. Again, the declaration of Attorney Dickinson filed on May 28, 2019 proves it without a doubt. Everybody, including the Court, knew exactly what was meant by the clarification of the employee list and cancelled checks and that Vaughn had a continuing duty and was under a continuing court order to fully supplement his discovery answers.

Further, if that clarification on Vaughn's employees was

not exactly as described by Turner herein, why would Vaughn have provided other supplemental discovery material such as his New Jersey business interests, his “consulting contract” for the Dank’s Edmonds store, etc.?

At a hearing on May 13, 2019, the trial court emphasized Vaughn’s ongoing duty to supplement his discovery when the Court stated, in part, “...and I will consider further remedies to a finding of failing to answer slash update interrogatories at the time of motions *in limine*...” (RP2 89)

Further, Exhibit 239 is the actual Order RE: Motion to Compel, wherein the Court ordered, “The respondent shall update all of his interrogatory answers and requests for production of documents forthwith, including but not limited to his department of revenue tax returns (whether monthly or quarterly or other period) for each business he is associated with through 1st Qtr. 2019 (March 31, 2019), all personal & 2018 business IRS tax returns for 2017, and his lease or rental contract with S.J. Kim, and all reports, accounting and financial statements of any kind with or by Rhodes & Associates for Mr. Vaughn or any of his business interests and all bank statements & cancelled checks through 4/30/19 if such was within the requests of the interrogatories and RFP’s. (EX2 239) This matter is continued to May 13, 2019 at 1 pm for review & consideration

of possible further sanctions. Fees are reserved.” [DESIGNATE EX 239].

In Magaña v. Hyundai, the trial court struck Hyundai’s pleadings and witnesses and entered an order of default against Hyundai. The entry of an order of default against Vaughn is even more appropriate than *Magaña* because Vaughn is in a fiduciary relationship with Turner and his children (child support) and therefore has a heightened duty, unlike *Hyundai*.

Pursuant to *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997), if a trial court imposes one of the more “harsher remedies” under CR 37(b), then the record must clearly show (1) one party willfully or deliberately violated the discovery rules and orders, (2) the opposing party was substantially prejudiced in its ability to prepare for trial, and (3) the trial court explicitly considered whether a lesser sanction would have sufficed. *Id.*

In *Magaña*, the Washington Supreme Court stated after analyzing the *Burnet* factors:

“A trial court exercises broad discretion in imposing discovery sanctions under CR 26(g) or 37(b), and its determination will not be disturbed absent a clear abuse of discretion.” *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006) (citing *Fisons*, 122 Wn.2d at 355-56, 858 P.2d 1054). “A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.” *Fisons*, 122 Wn.2d at 339, 858 P.2d 1054 (citing *Holbrook v. Weyerhaeuser Co.*, 118 Wn.2d 306, 315, 822 P.2d 271 (1992)).

"A discretionary decision rests on 'untenable grounds' or is based on 'untenable reasons' if the trial court relies on unsupported facts or applies the wrong legal standard; the court's decision is 'manifestly unreasonable' if 'the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take.' "Mayer, 156 Wash.2d at 684, 132 P.3d 115 (internal quotation marks omitted) (quoting State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

If a trial court imposes one of the more "harsher remedies" under CR 37(b), then the record must clearly show (1) one party willfully or deliberately violated the discovery rules and orders, (2) the opposing party was substantially prejudiced in its ability to prepare for trial, and (3) the trial court explicitly considered whether a lesser sanction would have sufficed. Burnet, 131 Wash.2d at 494, 933 P.2d 1036. "The purposes of sanctions orders are to deter, to punish, to compensate and to educate." Fisons, 122 Wash.2d at 356, 858 P.2d 1054.

Willfulness

"Fair and reasoned resistance to discovery is not sanctionable." Fisons, 122 Wn.2d at 346, 858 P.2d 1054. "A party's disregard of a court order without reasonable excuse or justification is deemed willful." Rivers v. Wash. State Conference of Mason Contractors, 145 Wn.2d 674, 686-87, 41 P.3d 1175 (2002) (citing Woodhead v. Disc. Waterbeds, Inc., 78 Wn.App. 125, 130, 896 P.2d 66 (1995)).

The trial court found Hyundai willfully violated the discovery rules. The Court of Appeals held •It was reasonable for the trial court to conclude that Hyundai's failure to timely disclose similar incidents of seat back failure was willful." Magaña II, 141 Wash.App. at 511, 170 P.3d 1165. The trial court did not abuse its discretion in finding

Hyundai willfully violated the discovery rules.

The trial court held, and the Court of Appeals agreed, Hyundai's responses to Magaña 's request for production 20 and interrogatory 12 were false, misleading, and evasive. *Id.* The record supports this finding. Hyundai failed to inform Magaña in its response to request for production 20 that there were in fact several claims of alleged seat back failure of which Hyundai was aware, including the Martinez, McQuary, and Salizar claims. *Id.* at 527-28, 170 P.3d 1165. In fact, Hyundai falsely represented to Magalia that there were no claims involving the seat back of 1995-1999 Hyundai Accents. Then Hyundai failed to supplement its incorrect responses, as required under CR 26(e)(2), when it learned about other claims involving seat back failure, including the Wagner, Bobbitt, Pockrus, and Powell claims, before the June 2002 trial. *Id.* Additionally, Hyundai's responses to interrogatory 12 were inaccurate because it misrepresented there were no identical recliner mechanisms in other Hyundai vehicles as in the 1996 Accent.

A corporation must search all of its departments, not just its legal department, when a party requests information about other claims during discovery. Here Hyundai searched only its legal department. Hyundai's counsel told the trial court that in response to request for production, Hyundai's search "was limited to the records of the Hyundai legal department" and that "no effort was made to search beyond the legal department, as this would have taken an extensive computer search." CP at 5319. As the trial court correctly found, "[t]here is no legal basis for limiting a search for documents in response to a discovery request to those documents available in the corporate legal department. This would be the equivalent of limiting the responses in [Behr, 113 Wn.App. 306, 54 P.3d 665,] to a search for chemical tests which were on record in the corporate legal office, without disclosing that the search was so limited." CP at 5319-20. The trial court went on to say, "the legal department at Hyundai worked closely with

the Consumer Affairs Department with respect to customer complaints and claims, including product liability claims. The vehicle owners' manual directed customers to call the Consumer Affairs number." CP at 5320. Hyundai had the obligation to diligently respond to Magalia's discovery requests about other similar incidents. It failed to do so by using its legal department as a shield. The trial court also found "Hyundai had the obligation not only to diligently and in good faith respond to discovery efforts, but to maintain a document retrieval system that would enable the corporation to respond to plaintiff's requests. Hyundai is a sophisticated multinational corporation, experienced in litigation. · Id. Hyundai willfully and deliberately failed to comply with Magaña's discovery requests since Magaña's initial requests in 2000 and continued to do so.

Vaughn holds a Bachelor's Degree in Finance and is a sophisticated business man. He also worked in his father's CPA firm and a bank. He obtained at least three CPA firms to represent him during this litigation and it was clear throughout the trial that the evidence he provided to his CPAs were cherry picked without ever producing the basic financial records to provide a complete and full picture of his finances.

Vaughn's obstructionism severely prejudices Turner in trying to figure out the nature and extent of the business holdings for division pursuant to the CIR and his true income for purposes of setting child support.

The *Magaña*'s court continued:

The record fully supports the trial court's other conclusions: there was no agreement between the

parties to limit discovery, Hyundai's definition of "claims" was too narrow because Magaña's discovery request was broad, and the seats in the Hyundai Elantra were similar to the seats in the Hyundai Accent. These findings of fact also support the conclusion Hyundai willfully violated the discovery rules.

The trial court's finding that Hyundai willfully violated the discovery rules was based on reasonable grounds and substantial evidence in the record. The trial court did not abuse its discretion as to the willfulness element of the three-part test.

In Behr the trial court found the plaintiffs were substantially prejudiced in preparing for trial because " 'the discovery violations complained of suppressed evidence that was relevant, because it goes to the heart of the plaintiffs' claims, and it supports them.' " 113 Wn. App. at 325, 54 P.3d 665 (quoting court proceedings). As Judge Bridgewater articulated, "On remand, the sole issue was whether Hyundai was liable for the allegedly defective occupant restraint system." Magana II, 141 Wn. App. at 531, 170 P.3d 1165 (Bridgewater, J., dissenting). Hyundai suppressed relevant evidence which included many documents about other similar claims against Hyundai that would have supported Magaña's claims.

The trial court did acknowledge a default judgment would reinstate the prior verdict, which was substantial, but went on to say, "The remedy of default is not dependent upon the amount of potential verdict or in this case, actual damages verdict." CP at 5334. While the amount reinstated is large, this is not because of any wrongdoing on Magaña's part: rather it is due to Hyundai's atrocious behavior in failing to respond to discovery requests throughout the lawsuit.

In addressing whether a monetary fine would suffice, the trial court found it would be difficult to know what amount would be suitable since

"Hyundai is a multi-billion dollar corporation." CP at 5332-33. It also found a monetary sanction would not address the prejudice to Magaña or to the judicial system. Since there were no counterclaims in this case, the trial court could not strike those as a remedy. The trial court also denied a continuance, which Hyundai had proposed. The trial court held that sanctions for discovery violations should not reward the party who has committed the violations and that granting a continuance would only exacerbate the situation. The Court of Appeals disagreed claiming, "Allowing Magaña to investigate the incidents of seat failure will shed light on whether Hyundai manufactured and sold a defective product: Magaña 11, 141 Wn. App. at 519, 170 P.3d 1165. But as aforementioned, time will not allow Magaña to investigate other incidents because much of that evidence is lost or stale.

Hyundai argues a default judgment is appropriate only if the discovery violations irremediably deprived the opposing party of a fair trial on its claims or defenses. Hyundai misstates this prong of the test. As aforementioned, the record must show that the discovery violation prejudiced the opposing party's ability to prepare for trial. The test looks at preparing for trial, not having a fair trial.

Id.

Turner was met with constant obstructionism from the outset. See the following deposition excerpts from November 7, 2016 as a prime example:

Q Okay. So on May 16th -- or strike that. On March 16, 2016, when you removed \$1,078,000 in cash from the Chase bank account that was solely in your name, what did you do with those funds?

A Can you say the date again?

Q March 16, 2016.

A Yeah. And the question?

Q What did you do with those funds?

A The funds were turned over to Pacific Green Collective.

Q Okay. And to what individual in particular?

A Christina McCormick, which there is an affidavit.

Q Right. And what did she do with those funds?

A I don't know.

At 15

Q And you don't know what Christina McCormick did with that million dollars?

A It went to the collective.

Q Uh-huh. What's that mean?

A It was turned over to the collective. I got receipts for turning over those funds to the collective.

Q Sir, didn't you put down on a document that you were a 100 percent owner of Pacific Green Collective?

A I saw a document be submitted over today. I haven't had a chance to review it in detail. If you would like to go over that document, I'd be happy to do it.

(EX2 272 at 16)

A Original Productions?

Q Original Investments.

A Uh-huh.

Q And who's the sole 100 percent owner of that?

A I would have to look at the legal documents.

Q Would that not be you?

A I would have to look at the legal documents.

Q You're going to play that game.

A No. I'm just answering it honestly.

Q Okay. How are you familiar with that LLC?

A I believe it is one of the companies that I may be associated with. I would have to look at the legal documents.

Q You may be the owner of?

A Maybe.

Q But you don't know.

A I would have to look at the legal documents.

Q Are you familiar with 6909 Martin Way East LLC?

A I believe that is one registered with the State.

Q Yeah. And one of its members is Original Investments LLC, correct?

A I would have to look at the legal documents.

(EX2 272 at 14)

Q You're a business partner of hers, correct?

A Once again, I'm a member of a non-profit collective.

Q Okay. Original Investments LLC is a member of 6909 Martin Way East LLC, correct?

A I would have to check the documents.

Q Okay. Were you aware that that 6909 Martin Way East LLC was formed in the spring of 2016?

A I don't remember.

Q Okay. So these huge significant transactions you don't have any memory of.

A I will gladly review documents and see what ...

(EX2 272 at 16)

Q And Original Investments LLC and 6909 Martin Way East LLC purchased a commercial building on May 5, 2016, in Thurston County, Washington, correct?

A I don't have any current knowledge of that transaction. But ...

Q You don't?

A No.

Q And \$680,000 was paid for that commercial building, and you and Christina McCormick are the owners thereof, correct?

A Not to my knowledge.

Q And you understand what perjury is?

A Yeah.

(EX2 272 at 14-15)

Q So do you own a commercial property with her at 6906 -- I believe I was saying 6909 -- 6906 Martin Way East?

A This LLC is registered to her.

Q Right.

A And it shows here that Original Investments is a member.

Q Yeah, which is you, because it's a single member LLC.

A Okay.

Q And you guys bought a \$680,000 building, right?

A I would have to check the documents.

(EX2 272 at 44)

A What 6906 Martin Way East has done, I don't have permanent memory of all transactions that it does.

Q Well, that would be kind of a big one to not remember. Isn't it --

A There's a lot of different LLC's. They do different things. I'm also trying to understand the basis of how this has a relationship to a committed intimate relationship, but I'm more than happy to answer your question.

(EX2 272 at 45)

A Fess up to what?

Q The truth.

A The truth of what?

Q That you and Christina McCormick bought that building for \$680,000 on May 5th or 6th, 2016.

A I'm -- yeah, I'm not following. So the fact that I don't remember some transaction -- what do you want me to answer here? I'm just trying to ...

(EX2 272 at 47)

Q Who owns Dank's Wonder Emporium LLC?

A I believe I am the sole member of Dank's Wonder Emporium LLC.

Q So you have a retail marijuana store located at 6906 Martin Way East under the name of Dank's Wonder Emporium; is that correct?

A Yeah. 6906 Martin Way East, yes.

(EX2 272 at 52)

Q Okay. And do you have a retail store in Lewis County?

A We have a license in Lewis County. We do not have a retail store yet.

Q Okay. And who's "we"?

A Sorry. I was using the common term "we" for the LLC.

Q So Dank's Wonder Emporium?

A Yeah, Dank's Wonder Emporium.

(EX2 272 at 53)

Q So how many retail stores are you or any of your LLC's running or managing right now?

A Just one.

Q That's the one in Thurston County?

A Yes.

(EX2 272 at 86)

Q Okay. Do you have any accounts at any banks?

A Not to my knowledge. I believe that all my personal accounts are closed.

(EX2 272 at 95)

A Do I really have to turn over my wallet?

Q Yeah.

A There's one.

Q You ought to put it on the table so I can see what you're doing.

A There's Chase, Bank of America. Oh, there's a Marina Turner, Navy Federal Credit Union.

Q Can she have that back?

A Sure.

(EX2 272 at 96)

Q Do you have any LLC's in any other states?

A Yes.

Q And what states?

A Oregon.

Q Any other states like California?

A I do not believe in California, but we might.

Q Who's "we"?

A I apologize for using "we." I speak that way because of when you're talking about a business entity. So I do not believe I have any other LLC's besides in Washington and Oregon.

Q Okay. And what LLC's do you have in Oregon?

A At the advice of my accountant, I believe we opened up Dank Farms, Dank Industries, and Dank Distribution. And those are solely to try to achieve and gain licenses to be able to do -- the different licenses -- they wanted -- every license they wanted to be in an LLC.

(EX2 272 at 98-99)

A I feel I've been extremely honest on all my tax returns always. I sign them.

(EX2 272 at 100)

If this Court wants a true sense of the games played by Mr. Vaughn and trying to extract discovery information from him, it should read pages 80 to 90 of his deposition of June 1, 2018. Counsel for Turner was simply trying to get information from him about his financial declaration, which proved nearly impossible. EX2 274 pages 80-90.

Vaughn has the temerity to ask in his opening brief, "What was willfully withheld from the requested discovery?" (Br. Of App. At 37). Just look at Vaughn's answers to discovery in Exhibits 350 and 351. Turner is entitled to have Vaughn sign discovery requests under penalty of perjury. Vaughn merely states "no new information" to virtually every question and that was clearly a false statement. There is so much that has been withheld by Vaughn. The Edmonds store, his Canadian business interests, *let alone all the other business interests summarized in Exhibit 279*. He ignores his failure to disclose his attempts to

sell stock in Dank's and his attempts to franchise Dank's. (RP2 335, 611-12, EX2 300)

Here is an interesting exchange at Vaughn's deposition on November 26, 2016 which highlights his obfuscation:

- Q. Where did the capital come from to purchase the inventory that's currently inside of Dank's Wonder Emporium right now, all the glass and all the marijuana?
- A. I'd have to check with Dani.
- Q. You have a degree in finance and you don't know where your own retail store got the capital for its inventory?
- A. As you can see, there's so many LLCs, it's almost impossible for somebody like me to track.

(EX2 273 at 146)

Another exchange during Vaughn's deposition on June 1, 2018:

- Q. Sir, who keeps the books for 6906 Martine Way E, LLC?
- A. I would have to check that.
- Q. You don't know?
- A. Yeah. I would for Original Investments and for Dank's Wonder Emporium, I know who keeps the books. I'm just trying to be totally truthful.
- Q. Who?
- A. Our current bookkeeper.
- Q. Who's that?
- A. It's Viola, and I don't know her last name.
- Q. Okay. You're running hundreds of thousands a month through Dank's Wonder Emporium, but you don't know who keeps the books?
- A. Year, I just told you her name.
- Q. Viola?
- A. Yeah.

Q. What's her last name?

A. I just don't remember her last name.

Q. Really?

A. Yeah.

Q. Where's her office?

A. She literally sits a couple of seats away from me. I'm just not good with names. I'm highly dyslexic.

Q. So who keeps the books for 6906 Martin Way E, LLC?

A. I'm being honest, I don't know. I answered who keeps the books for the other two which wasn't even your question so I'm giving you more information.

Q. Who signs the rent checks?

A. I believe rent is paid in cash.

Q. Okay. And so walk me through it. Let's say, for example, today is June 1st. Is the rent due on the 1st?

A. To who? We have a bunch of LLCs. Please be more specific.

(EX2 274 at 40 to 41)

Most significantly, Vaughn has withheld his monthly income from discovery. Vaughn has withheld his income from the "consulting contract" with the Edmonds Dank's Wonder Emporium. Only Vaughn truly knows what's been withheld.

The trial court put Vaughn's income at \$150,000 per month and he is not contesting that figure. For all Turner knows, it is likely substantially more than that.

Not only did Vaughn refuse to answer deposition questions in good faith, but without all the bank statements, cancelled checks, business records and even the nature and extent of the businesses it was virtually impossible for counsel for

Turner to even depose Vaughn's expert witness CPA Shelley Drury, let alone value these businesses.

Despite his businesses generating millions of dollars per year, Vaughn would never admit to any profit and refused to disclose relevant information through discovery. Please see Petitioner's First Set of Interrogatories and Requests for Production of Documents to Respondent and his answers. (EX 350 and 351) Vaughn's answers are a complete mockery and were never properly supplemented.

Exhibit 242 admitted at the second trial is a summary of Turner's discovery requests and Vaughn's discovery responses and hearings surrounding those.

Exhibit 279 admitted at the second trial is a summary of various business connected to Vaughn discovered by Turner.

The facts in this case prove overwhelmingly that Vaughn deliberately violated the discovery rules and orders, Turner was substantially prejudiced in her ability to prepare for trial and a lesser sanction will not suffice. This case has been pending for over three years – since February 2016. Turner was unable to even have the business valued because of the paucity of records and discovery responses.

The trial court considered a lesser sanction when it stated, "I can't imagine what other sanction I could have imposed because at every turn Mr. Vaughn confused, omitted and was not

credible.” (RP2 56)

It further found that this ruling was the least restrictive in this case. (CP2 399)

Vaughn’s counsel admits in Appellant’s opening brief that the trial court heard his argument at trial wherein he states the lesser restrictive option should be no sanctions. (Br. af App. at 35)

The trial court did consider the discovery violations were willful when it stated,

“...because at every turn Mr. Vaughn confused, omitted and was not credible. I had thought perhaps I would not find that to be the case, and that there would be enough to make a ruling on that (what sp) the court was confident represented all the assets brought into being by this communitylike partnership. But even after a full trial, that wasn’t the case, other than, you know, what I did do based on what I had.” RP2 56-57

The trial court further found and specified Vaughn’s willful violations when it incorporated the “Background” section (Pages 2-16) of the Motion for Default filed on May 17, 2019 that specified a majority of his violations, intransigence and lack of credibility. (CP2 242-256, 398)

The trial court reserved its ruling on Turner’s motion for default allowing Vaughn to present his case when it stated, “Now, I’m not going to make any firm and fixed rulings at this time. I’m going to hear everything, and then I’m going to make a decision

based in part on what is properly within any motion to -- any motion *in limine* that should not be considered or any pleadings that should be discarded.” (RP2 108)

After a seven day trial and as delineated specifically in the Final Order and Findings on Motion for Default and for Contempt of Court, Order to Strike and for Attorney’s Fees Pursuant to CR 37 filed August 16, 2019, there is substantial evidence supporting the trial court’s findings of fact that this was the least restrictive, that Vaughn was in willful violation and Turner was prejudiced, which unquestionably meets all factors.

When one considers Vaughn’s history of obstructionism, perjury, contemptible behavior, willful refusal to follow court orders, removal and concealment of over \$1.25 million and his mockery of discovery, his argument is made in bad faith, is frivolous and is put forth to harass and cause unnecessary expense to Turner. Pursuant to the unpublished opinion of *In re the Marriage of Van de Graff*, 10 Wn.App. 2d 1007 (2019), this argument is further intransigence on the part of Vaughn and he should be sanctioned an additional \$125,000 because he clearly hasn’t gotten the message. His intransigent behavior persists unabated.

Tuner is certainly prejudiced when she cannot even get a complete list of the businesses and assets out of Vaughn and certified under oath. She is certainly gravely prejudiced when

she cannot have businesses valued because his own expert witness CPA Drury testified at trial that his business records were “unreliable.”

Vaughn’s claim that there was no CR 26(i) conference is simply wrong. There was one held on September 7, 2018 and another one held April 2, 2019. (CP2 221-223)

Vaughn fabricated evidence (the purported separation contract) and lied to the trial court about it. (CP2 335-340)

There was no irregularity in the proceedings of the Court, or abuse of discretion by the trial court judge which prevented Vaughn from producing the required discovery.

Substantial evidence supports the trial court’s findings that she considered lesser sanctions, that the discovery violations were willful, and that Turner was substantially prejudiced as a result of it and the Trial Court imposed the least restrictive sanction possible on Vaughn.

One must remember however that despite the default and striking of his pleadings Vaughn was *still awarded* the most valuable assets by the trial court: all the cash generating businesses which give him a very conservative gross monthly income of \$150,000 per month.

B. Vaughn’s Legal Arguments Regarding Lay Witness Testimony as Expert Testimony Is Without Merit. He Testified Himself During Trial That His Marijuana Collective Received More Cash Than Credit/Debit Card Payments.

Firstly and most importantly, Vaughn *himself testified* at trial that Pacific Green Collective received most of its revenue in the form of cash (versus debit/credit cards) and paid most of its expenses with that cash. (RP2 734-736) End of argument. That is why this argument is frivolous, devoid of any merit whatsoever and made solely to harass and cause Turner expense. It is intransigence pursuant to *In re the Marriage of Van de Graaf*.

Importantly however, there were a number of witnesses that testified that the medical marijuana collectives like Pacific Green were mostly cash businesses, including two of Vaughn's CPAs Shelley Drury and Dani Espinda. Christine Morris sold her medical marijuana dispensary to Vaughn and testified to 60% cash and 40% debit/credit card as a conservative estimate.

(1) *Christine Morris testified that she ran a medical marijuana collective that was purchased by Mr. Vaughn and that she accepted credit and debit cards at her collective. She testified that 60% of her revenue came in as cash and 40% came in through the credit and debit cards. Respondent's expert witness, Dani Espinda, Certified Public Accountant, testified that she had extensive experience in the cannabis industry that that it is substantially a cash industry. Respondent's expert witness, Shelley Drury, Certified Public Accountant, also testified that the cannabis industry was substantially a cash industry. John Douville*

*testified that when he worked in the cannabis industry it was substantially a cash industry.”
(CP2 360)*

Lastly, John Douville, one of Vaughn’s cannabis suppliers testified Vaughn always paid him in cash.

The trial court used the best evidence it had and made a conservative ruling in regards to Vaughn’s estimated income.

In light of Vaughn’s own trial testimony, there is no legal or good faith basis for this argument by Vaughn. It should be found to be frivolous, intransigent and he should be sanctioned accordingly.

C. The Trial Court’s Division of Assets Were Just and Equitable and Conservative After Considering the Unreliable Documentation and Omission of Financial Information by Vaughn.

Obviously, it’s very disingenuous for Vaughn to argue that the trial court’s division of community like property acquired during the committed intimate relationship when he acted in bad faith obstructing discovery. There is no way to judge what is fair and equitable when both sides don’t put all their cards on the table. Vaughn caused the exact problem of which he is now complaining. That makes his arguments in this regard intransigent, bad faith and frivolous.

Vaughn’s bad faith, obstructionism and intransigence made it impossible for Turner and the trial court to ascertain with certainty the true nature and extent of the community like

property. The trial court had to do the very best it could despite Vaughn's obstructionism. Vaughn's educational background and work history make these transgressions particularly egregious.

We know one thing for certain: the trial court awarded Vaughn businesses that generate \$150,000 per month in gross income for him. We know another thing for certain: Pacific Green Collective generated hundreds of thousands of dollars per month in Square revenue and that "most" of Pacific Green Collective's revenue was cash from customers ("members of the collective" as Vaughn refers to them) and not from Square. Vaughn testified that there were over 12,000 "members" of Pacific Green Collective. (RP2 982)

We also know that Vaughn repeatedly applied for retail marijuana licenses from 2013 through 2016. (RP2 741)

Those three facts are really all that could be established with any certainty. The true nature and extent of businesses and assets accrued by Vaughn, as well as his true monthly income remain unknown due to his abject refusal to disclose. To now appeal the trial court's rulings after his actions and obstructionism is pure intransigence.

We must remember, despite the foregoing, the trial court still awarded Vaughn the best assets: the businesses that generate for him at least \$150,000 per month in personal income to him.

A trial court's division of property following a CIR for abuse of discretion. *Byerley v. Cail*, 183 Wash. App. 677, 684-85, 334 P.3d 108 (2014). "A trial court abuses its discretion if its decision is manifestly unreasonable, adopts a position no reasonable judge would take, is "based on untenable grounds," or if the judge misapplied the law. *In re Matter of L.H.*, 198 Wash. App. 190, 194, 391 P.3d 490 (2016).

The reviewing court defers to the trial court's unchallenged findings of fact, as well as challenged findings supported by substantial evidence, but reviews de novo whether the trial court's legal conclusions properly follow from those findings. *Pennington*, 142 Wash.2d at 602-03, 14 P.3d 764. With respect to challenged factual findings, evidence is "substantial" if it would persuade a rational, fair-minded person of the finding's truth. *In re Marriage of Fahey*, 164 Wash. App. 42, 55, 262 P.3d 128 (2011). In our review, we neither weigh the evidence nor judge the credibility of the witnesses. *In re Marriage of Greene*, 97 Wash. App. 708, 714, 986 P.2d 144 (1999).

Washington courts recognize that two individuals in a CIR may both have an interest in property acquired during the relationship. *Byerley*, 183 Wash. App at 685-86, 334 P.3d 108. Following the termination of a CIR, courts may equitably divide property in a manner similar to marriage dissolution proceedings. *Connell*, 127 Wash.2d at 351, 898 P.2d 831. A CIR is a “stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.” *Connell*, 127 Wash.2d at 346, 898 P.2d 831. The CIR, based on equitable principles, protects the interests of unmarried parties who acquire property during their relationship by preventing the unjust enrichment of one at the expense of the other when the relationship ends. *Pennington*, 142 Wash.2d at 602, 14 P.3d 764.

Upon determining that a CIR existed, courts may distribute property acquired during the relationship that would be treated as community property were the parties legally married. *Connell*, 127 Wash.2d at 351, 898 P.2d 831. Property acquired during a CIR is presumed to be community-like. *Pennington*, 142 Wash.2d at 602, 14 P.3d 764; *see also In re Estate of Borghi*, 167 Wash.2d 480, 483-84, 219 P.3d 932 (2009). (plurality opinion) This presumption may be rebutted if the distribution would, at the end of the relationship, unjustly enrich one party at the expense of the other. *Pennington*,

142 Wash.2d at 602, 14 P.3d 764.

Property and income acquired during a CIR is presumed to be community-like property. *Connell*, 127 Wash.2d at 351, 898 P.2d 831. This presumption can be rebutted by showing that one party acquired the property by “gift, bequest, devise, or descent with the rents, [including the] issues and profits thereof.” *Connell*, 127 Wash.2d at 351, 898 P.2d 831.

In the case at bar, Tuner introduced Vaughn to the marijuana industry. (RP2 145) She assisted him tending the plants. (RP2 440). She obtained a medical marijuana card so he could grow more plants. (RP2 144) She agreed for her social security number to be used to enable Vaughn to receive hundreds of thousands of dollars per month in Square credit/debit card payments for the marijuana. (RP2 157-158). Most significantly, she cared for their two children and took care of the household to allow Vaughn to grow the business.

Expert witness CPA Drury is incapable of determining whether Turner’s withdrawals from the joint account were “authorized” or not. The trial court made a credibility determination in favor of Turner on this issue. It is certainly not credible that Vaughn knew nothing of these withdrawals when he was in that

account because that's where all the Square proceeds were deposited, and he had full access to the account.

The funds removed from the joint account by Turner was spent on the household and the family. (RP 84) It was not a salary for her.

The trial court in this case did the best it could in the face of massive obfuscation by Vaughn. Again, we still to this day do not know his true income, except he is not contesting \$150,000 per month.

D. Vaughn Should Pay Reasonable Attorney Fees on Appeal.

RAP 18.1 provides for an award of attorney fees if authorized by applicable law. There are four such grounds here: the common law, statutory, case law and court rule.

(1) This Court Should Award Fees to Turner on the Same Grounds as the Trial Court.

The trial court ordered Vaughn to pay \$125,000 in Turner's attorney fees at trial citing CR 37. (CP 374) Vaughn has not appealed from that decision.

If a party prevails on appeal and was entitled to attorney fees at trial, the party may seek fees on appeal. *Lindgren v. Lindgren*, 58 Wn. App. 5 88, 599, 794 P.2d 526, 533 (1990), *review denied*, 116 Wn.2d 1009 (1991). CR 37, unlike RCW 26.09.140, does not

require consideration of need or ability to pay in making an award. Thus, there is no requirement to file an affidavit of financial need. *In re Marriage of Wendy M.*, 92 Wn. App. 430, 441, 962 P.2d 130 (1998).

This Court should award Turner her reasonable attorney fees on appeal.

(2) Vaughn's Intransigence Justifies a Reasonable Attorney Fee Award to Turner.

Intransigence is a basis for awarding fees on appeal, separate from RCW 26.09.140 (financial need) or RAP 18.9 (frivolous appeals). *Chapman v. Perera*, 41 Wn. App. 444, 455- 56, 704 P.2d 1224, *review denied*, 104 Wn.2d 1020 (1985). The financial resources of the parties need not be considered when intransigence by one party is established. *Matter of Marriage of Greenlee*, 65 Wn. App. 703, 7, 11, 829 P.2d 1120, *review denied*, 120 Wn.2d 1002 (1992); *In re Marriage of Morrow*, 53 Wn. App. 579, 590, 770 P.2d 197 (1989). Thus, no affidavit of financial need is required to make the award. *Mattson v. Mattson*, 95 Wn. App. 592, 606, 976 P.2d 157, 165 (1999). Moreover, a party's intransigence in the trial court can also support an award of attorney fees on appeal. *Eide v. Eide*, 1 Wn. App. 440, 445-46, 462 P.2d 562 (1969); *Chapman*, 41 Wn. App. at 456.

As Division III of the Washington Court of Appeals wrote
in the Van de Graff case,

“ . . . This litigation, however justified at its inception by the financial interests at issue, has been conducted in a manner designed to beat down the respondent rather than reach a proper resolution on the merits.

Equity demands that she be afforded some relief. Domestic relations cases spawn more emotionally-fueled litigation than most other legal practice areas. In this case, appellant has purposely imposed costs on respondent. He has accepted the benefits of the decree, but has often declined to comply with his obligations under that document. His behavior has been calculated to raise Lori's legal costs, just as the trial court found he did in the trial proceedings. The intransigence that permeated those proceedings likewise permeates this appeal.”

In re the Marriage of Van de Graff, 10 WN.App.2d 1007, 15
(Unpublished 2019).

Here, Vaughn engaged in bad faith intransigence purposefully designed to subvert the orderly administration of justice and to punish Turner. (CP2 399) Vaughn's arguments on appeal themselves continue that same intransigence. Vaughn's brief is mostly challenges to the findings of fact that have substantial support in the record, often including his own testimony. He either ignores evidence, denies that his own testimony was found to be not credible, or improperly disregards adverse evidence with no

articulable legal ground for doing so. Turner has incurred substantial expense to answer these pointless challenges

Vaughn's intransigence continues on appeal. Although he has the right to appeal, this Court should take note that Vaughn did not need to continue his litigious ways to get the result he seeks. He was given a much simpler, less expensive option for obtaining the same relief: providing the basic necessary financial documentation to the trial court at the time of trial. (CP2 360-361) The trial court stated Vaughn did not produce any meaningful business records for Pacific Green Collective and that it only had the 1099's from Square and bank records from only those bank accounts that Vaughn chose to disclose. (CP2 360)

Finally, Vaughn used his right of appellate review to once again torment and injure Turner. At the same time, he faults the trial court for not properly determining an asset/debt division when he provided little to no information about his business income.

Turner should not be forced to pay for Vaughn's continued intransigence and abuse of the legal process. This Court should award Turner reasonable attorney fees on appeal.

(3) A Reasonable Attorney Fee Award to Turner is Also Warranted Because Vaughn's Appeal Is Frivolous.

A party may also request attorney fees on appeal pursuant to RAP 18.9 if the appeal is frivolous. *Greenlee*, 65 Wn. App. at 7 11.

"An appeal is frivolous if no debatable issues are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists." (Citations omitted.)
See Chapman, 41 Wn. App. at 455-56.

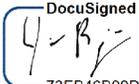
This Court should award Turner fees based on RAP 18.9. Vaughn's appeal is frivolous. His brief is based on a denial of the facts in the record.

IV. CONCLUSION

Based upon the foregoing, this court should affirm the trial court in all regards. This court should reject Vaughn's appeal and award Turner her attorney fees for defending against Vaughn's appeal and sanction Vaughn an additional \$125,000 for ongoing intransigence and bad faith.

Dated this 31st day of July, 2020.

RESPECTFULLY SUBMITTED,

DocuSigned by:

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JASON P. BENJAMIN, WSBA#25133
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CERTIFICATE OF SERVICE

I certify that on the 31st day of July, 2020, I caused a true and correct copy of this Brief of Respondent to be served on the following in the manner indicated below:

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8687CAA3FAED424...
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