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DIVISION III
STATE OF WASHINGTON
By _____

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

No. 343219

In re the Marriage of:

KATHLEEN M. GRANT,

Appellant,

and

JOHN D. GRANT,

Respondent.

RESPONDENT'S RESPONSE BRIEF

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I. INTRODUCTION

Respondent John D. Grant (hereinafter referred to as “Husband”) and Appellant Kathleen M. Grant (hereinafter referred to as “Wife”) were married on November 18, 1978, and separated June 23, 2009. A Petition for Dissolution was filed on February 1, 2010. Neither party was represented by an attorney in the dissolution action.

The couple came up with a settlement agreement between themselves. Wife was to receive “\$178,000.00 AND OWNERSHIP AND ALL RIGHTS TO GRANT’S PIZZA PLACE.” Husband was to receive “THE BALANCE OF THE ASSETS AND OWNERSHIP OF THE HOUSE.”

Final orders were entered May 24, 2010. Several years later, Wife began filing motions to reopen the dissolution case, as she was asserting she had no idea of the existence of Husband’s PERS retirement account and that it was not divided during the divorce. When those motions failed, Wife filed a partition action in Kittitas County Superior Court. Husband moved for summary judgment.

Prior to beginning oral argument counsel for Appellant Kathleen M. Grant stated as follows:

Your Honor, for purposes of speaking at today’s hearing, I’ve spoken to Mr. Denison about – I think he’s done an admirable

job of distilling down the issue today and for purposes of summary judgment.

I agree that really the only issue before the court is whether or not language of balance of the assets is enough to have awarded a PERS retirement to Mr. in its entirety. So I know both sides kind of wanted to have their say about who collected mail and didn't collect mail and that type of thing, but I think all of that, as Mr. Denison indicates, is really superfluous to that one key issue. It's whether or not there's actually an asset to partition.

VRP (01-15-2016) at page 4, line 18 – page 5, line 7.

The sole issue in this case is whether or not the language contained in the parties' settlement agreement was sufficient to divide all remaining assets of the couple including the PERS 3 Retirement Account of the Husband.

II. STATEMENT OF THE CASE

Husband and wife were married on November 18, 1978, and separated June 23, 2009. (CP 63) A Petition for Dissolution was filed on February 1, 2010. (CP 34) Neither party was represented by an attorney in the dissolution action. (CP 34, 63 and 76) Final orders were entered May 24, 2010. (CP 63 and 76) Several years later, Wife began filing motions to reopen the dissolution case, as she was asserting she had no idea of the existence of Husband's PERS retirement account and that it was not divided during the divorce. (CP 87, 95, 98, 101, 108, and 116) These motions were all unsuccessful. (CP 98 and 123)

During the marriage, Husband's state retirement (both his PERS retirement and his Deferred Compensation) was discussed at length between the couple. (CP 24) They had discussions about whether they should switch from PERS 2 to PERS 3. (CP 25) They had discussions about re-funding the state retirement account when Husband went back to work for the state after an absence. (CP 30)

During the marriage, Wife checked the mail every day as Husband worked out of town, and she saw the retirement statements that came from PERS. The statements would come periodically throughout the years and always came in an envelope that very clearly stated it was from "Washington State Department of Retirement Systems." (CP 24) In contrast, the Deferred Compensation statements came in an envelope from Olympia, WA, and had the letters "DCP" on them. (CP 24)

Throughout the marriage newsletters regarding Husband's state retirement would come to the family home which was something that Wife would have seen when checking the mail. These were not in envelopes. They were simply taped shut. Even if all Wife did was put mail in Husband's office she could not help but notice that it was from the Department of Retirement Systems and addressed the PERS retirement plans. (CP 24-25)

When the couple switched from PERS 2 to PERS 3, they did so because it offered more liquidity. At that time, Husband was hoping to leave state employment and work with Wife at Grant's Pizza Place, a business owned by the couple. They discussed this at length and made the decision to go to a different retirement account. In addition, while Husband was working with the state, he would bring home a paycheck and sign it. He would then give it to Wife with the paystub attached. Wife deposited the check into the account and then would file the paystub at home where she would also file the quarterly statements from the Department of Retirement Systems. The paystub clearly showed a contribution to a retirement account. (CP 25)

The couple's own children filed declarations that during conversations with their mother about the pending divorce, Wife told them several times that Husband should keep his state retirement. Wife told them she was not going after any of Husband's retirement because he was the one who has worked all those years and supported the family, and he was the one who earned it. (CP 25)

Without the assistance of counsel, the couple drafted a settlement agreement between themselves. (CP 25, 74) Wife was to receive a cash payout and the restaurant, Grant's Pizza Place, and Husband was to receive the balance of the assets and the family home. (CP 74) There was

a Cashmere Valley Bank account that Wife received that was not listed in any of the documentation. This account had over \$30,000.00 in it on January 6, 2009. (CP 26)

Wife, as Petitioner, filed a Petition for Dissolution of Marriage on February 1, 2010. Husband joined in the Petition. (CP 34) In Paragraph 1.8 of the Petition under "Other" it states: "We have made a marital settlement agreement dividing our property and our bills. We are satisfied with this agreement. The attached agreement was signed freely and voluntarily by each of us and we intend to be bounded [*sic*] by it." (CP 36) This statement was written by Wife, and a copy of the Marital Settlement Agreement was attached to the Petition. (CP 26)

The Marital Settlement Agreement filed with the Superior Court provided as follows:

WE JOHN D. AND KATHLEEN M. GRANT) AGREE THAT KATHLEEN RECEIVES \$178,000 AND OWNERSHIP AND ALL RIGHTS TO GRANT'S PIZZA PLACE. JOHN RECEIVES THE BALANCE OF THE ASSETS AND OWNERSHIP OF THE HOUSE. NOTE: THIS AGREEMENT DOES NOT INCLUDE PERSONAL PROPERTY WHICH WILL BE DIVIDED BASED ON OTHER METHODS AS AGREED.

(Capitalization in original) (CP 74)

On May 10, 2010, Wife appeared in front of Judge Scott R. Sparks for purposes of entering final dissolution paperwork. Husband was not present. (CP 11) The Judge looked over the paperwork and specifically

stated, “It says, John receives the balance of the assets and ownership of the house.” (CP 46, lines 11-12). During questioning from Judge Sparks, Wife referred to the agreement between the parties, and specifically spoke about Husband’s retirement:

The Court: Okay. I don’t understand what the loan calculator’s in here for.

Wife: Well, as opposed to taking out his retirement and all that and get fines, penalties, he’s going to pay me quarterly. Or, if you wanted to break it down to monthly, it would be 2,000 a month. And that way he can still, you know, keep his –

(CP 47, lines 2-8) (emphasis added).

The Court: He is a CPA?

Wife: Uh-huh. As I said, the reason he set it up like that was as opposed to take everything out of his retirement --

(CP 52, lines 13-15) (emphasis added).

The Court was confused by some of the paperwork and spent an extended amount of time with Wife trying to make sure the parties were in agreement. The court asked an attorney in court (C.K. Powers) if attorneys would meet with parties who are in agreement to ensure that the paperwork reflected what the parties wanted. Ms. Powers indicated that attorneys usually meet with one person only so no conflicts arise and that it would take a couple of hours. (CP 52, lines 16 – CP 54, line 7).

The Court encouraged Wife to get her own attorney:

The Court: So you are doing some trusting here which is – you know, you are entitled to do that and it might be appropriate. But it also makes sense to –

Wife: Okay.

The Court: -- do what you can to make sure that you protect yourself. And he'll want to do the same thing.

Wife: Sure.

The Court: Do you have any questions for me?

Wife: What do you want me to bring back? I mean –

The Court: Well, any lawyer would look at that and go, I don't understand what you are talking about. So it's going to have to be something that is clear, lay out clearly what it is that you guys are doing with the property.

(CP 56, lines 11-24).

The Court: Ma'am, does that help? I know –

Wife: A little bit.

The Court: -- you are not leaving here with signed documents. But I'll let you talk to your husband. Maybe talk to an attorney or an accountant for yourself. And if you don't want to do either of those things, you can come back here and we can do this again. Okay?

(CP 58, lines 17-23).

Husband came back with Wife on May 24, 2010. Unfortunately, the recording from that court session was not available. (CP 12)

However, at the end of the court hearing Findings of Fact and Conclusions of Law and a Decree of Dissolution were entered by the Court. (CP 62 and 76).

Three years later on May 31, 2013, Wife through her attorney, Lawrence Merrifield, filed a Motion for Relief from Judgment (CR 60) in Clark County Superior Court under cause no. 13-3-01159-7. (CP 87). As part of that filing, Wife filed a Declaration. (CP 95). Wife stated in that Declaration:

During our marriage I took care of the household bills and John took care of our investments. I was aware of our 401(K)s and IRAs, but there was never anything said about him having a retirement plan through work. At the time of our divorce, the discussion of the finances was splitting everything 50/50, and I agreed to the proposed division as it was presented to me in the Decree and Findings of Fact, but as I have learned since our divorce was final, there were more retirement assets for the community to divide than what was eventually agreed to be divided up.

Not once during our discussions on settling the divorce was there ever any mention of him having a retirement plan with the State of Washington. Not a single time. I just thought, or assumed that the 401(k)s, IRAs, and some other investments was the total of our savings for retirement and would be used in conjunction with our social security.

(CP 95-96) (emphasis added).

After almost 8 months, this motion was dismissed by agreement. (CP 98). On January 6, 2014, Wife through her new attorney, Vernon McCray, filed another Motion for Relief from Judgment (CR 60), this

time in Kittitas County Superior Court under Cause No. 10-3-00010-7. (CP 101). On January 15, 2014, the same motion was filed again. (CP 108). The matter was set for hearing on February 2, 2014, but that hearing did not occur. On March 31, 2014, the same motion was filed yet again. (CP 116). This time Petitioner obtained an Order to Show Cause, and a hearing was held on April 7, 2014, where the Motion was denied. (CP 123).

On June 13, 2014, Petitioner filed an “Amended” Motion for Relief from Judgement, which was actually the same motion filed the previous three times only this time with attachments – the attachments being the Findings of Fact and Conclusions of Law and the Decree of Dissolution in the underlying divorce action. (CP 125). In addition, a Declaration from Petitioner was filed with the motion. (CP 154). Wife stated as follows:

During our marriage there was little if any discussion of finances based upon our mutual agreement early on to separate out our financial duties. ... I was aware of the existence of the 401(k)s and IRAs, but there was never anything mentioned or said about him having a State of Washington (PERS2) retirement plan through work.

At the time of our divorce we discussed the splitting of all assets on an equitable 50/50 basis. I agreed to John’s drawn up statement of assets and the division of assets after a discussion and questioning him as to the veracity of our total assets as presented to me in the Decree and Findings of Fact. ...

Not once during our discussions on settling the divorce was there ever any mention of him having a retirement plan with the State of Washington. I was led to believe by a lack of financial disclosure in discussions with John that the 401(k)s and IRAs, personal investments, and savings was the sum total of all our assets.

(CP 154-155) (emphasis added).

Husband filed a responsive declaration on July 8, 2014. (CP 158) Two days later, Mr. McCray canceled the hearing and an Agreed Order continuing the show cause hearing was entered setting the matter for hearing on August 18, 2014. (CP 29) On August 11, 2014, Mr. McCray filed a Second Amended Motion for Relief from Judgment. (CP 180) In addition, another Declaration of Wife was filed. (CP 185) In that declaration she stated the following:

He led me to believe that the Deferred Compensation Plan was the only retirement plan we had. I was never shown any quarterly or other statements, plan documents, information, prospectus, websites, logins, fund choices or changes, as submitted in his Sealed Records, nor was anything ever explained to me in relation to either the Deferred Compensation Plan or the PERS Plan. I found them myself while educating myself after I learned post-decree that there was a PERS plan.

(CP 185, line 21 – CP 186, line 1) (emphasis in original). Prior to this declaration, Wife had told the court that “401(k)s and IRAs, personal investments, and savings was the sum total of all our assets.” (CP 154-155). In the new Declaration she added that Husband led her to believe

“the Deferred Compensation Plan was the only retirement plan we had.”

(CP 185, lines 21-22).

I was totally unaware of his PERS 2 plan and was definitely not involved in any form of discussions or part of any process concerning this conversion.

(CP 186, Paragraph 6)

I had questioned him when he showed me his ASSET DISTRIBUTION Exhibit 1. I pointedly asked him: “Is that ALL we have? After 30+ years of marriage that is all we have?” His response was “THAT’S IT”. He then proceeded to convince me that what he presented was the complete total of all financial assets.

(CP189, Paragraph 16) (emphasis in original).

The court denied the motion and awarded Husband a judgment against Wife in the amount of \$6,762.72 in attorney fees and costs. (CP 193)

Wife then filed a partition action claiming that the parties are “co-owners of the following described personal property: Washington State Department of Retirement Systems, PERS 2 pension plan (converted to PERS 3 during the marriage).” (CP 1, Paragraph 3) Wife states that this retirement account “was not divided in this case.” (CP 2, lines 1-3)

On November 23, 2015, Wife sent 31 Requests for Admission to the Husband. (CP 274) Husband responded to those Requests on December 2, 2015. (CP 279) One Request for Admission was relevant to the summary judgment motion and is still relevant to this appeal. It

concedes a pivotal point relevant to this matter. Request for Admission

No. 8:

ADMIT or DENY that you provided Kathleen Grant all records, statements and other written information necessary for her to determine and verify the extent of and the accuracy of the values of all assets acquired during the marriage.

(CP 275) Husband's response was: "ADMIT". (CP 280)

On December 8, 2015, Husband filed a Motion for Summary Judgment. CP 8. The one and only issue the court was asked to decide was whether "the PERS 3 Retirement of Mr. Grant [was] disposed of in the dissolution action between the parties." CP 15. "Defendant asks that the court find no genuine issue of material fact with respect to the issue of whether the PERS 3 Retirement was disposed of in the underlying dissolution action. Defendant asks that the court find in his favor and dismiss this action with prejudice and award Defendant his attorney fees and costs." CP 15.

This Court, like the Superior Court, is now asked a single question: was the PERS 3 Retirement of Mr. Grant disposed of in the dissolution action between the parties?

III. ARGUMENT

A. Standard of Review: Appellate review of fact and law respecting a motion for Summary Judgment is *de novo*.

“The appropriate standard of review for an order granting or denying summary judgment is *de novo*, and the appellate court performs the same inquiry as the trial court.” *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 6, 282 P.3d 1083, 1085 (2012). A motion for summary judgment is properly granted where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Id.* The reviewing court should view “the facts and reasonable inferences from those facts in the light most favorable to the nonmoving party.” *Id.*

However, “[u]nreasonable inferences that would contradict those raised by evidence of undisputed accuracy need not be so drawn.” *Snohomish County v. Rugg*, 115 Wn. App. 218, 229, 61 P.3d 1184 (2002). Where reasonable minds can reach but one conclusion from the admissible facts in evidence, summary judgment is appropriate. *Id.*; see also *Ruff v. County of King*, 125 Wn.2d 697, 704, 887 P.2d 886 (1995) (when reasonable minds could reach only one conclusion, questions of fact may be determined as a matter of law).

B. It has been conclusively established that Husband provided Wife with all records, statements and other written

information necessary for her to determine and verify the extent of and the accuracy of the values of all assets acquired during the marriage.

CR 36 allows either party to serve on the other party “a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.” CR 36(a). CR 36(b) outlines the effect of admissions pursuant to such a request: “Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Emphasis added. CR 36 requests for admissions “eliminate from controversy matters which will not be disputed.” *Coleman v. Altman*, 7 Wash. App. 80, 86, 497 P.2d 1338 (1972). Such admissions:

... promote both efficiency and economy in resolving disputes. If a point is conceded, litigants need not expend effort in investigations concerning it nor incur expense in presenting evidence to prove it. Judicial administration is also aided. Admissions reduce the time required to try a case. Indeed, they often make summary judgment possible. Finally, admissions encourage litigants to evaluate realistically the hazards of trial, and thus tend to promote settlements.

Lakes v. von der Mehden, 117 Wash. App. 212, 218, 70 P.3d 154, 157 (2003), *quoting* 8A Charles Alan Wright, Arthur R. Miller & Richard L.

Marcus, Federal Practice and Procedure § 2252, at 522 (1994) (Emphasis added).

On November 23, 2015, Wife sent 31 Requests for Admission to the Husband. (CP 274) Husband responded to those Requests on December 2, 2015, prior to the filing of his motion for Summary Judgment. (CP 279) Request for Admission No. 8 asked that Husband admit or deny that he “provided Kathleen Grant all records, statements and other written information necessary for her to determine and verify the extent of and the accuracy of the values of all assets acquired during the marriage.” (CP 275) Husband admitted that he had done just that. (CP 280) This was consistent with every declaration he had filed previously.

This issue was brought up in the briefing for the summary judgment motion. (CP 266-267 and CP 274-280) Wife never made any motions to amend or withdraw this particular admission. Therefore, for purposes of granting or denying the motion for summary judgment, it has been conclusively established that Husband provided Wife “with all records, statements and other written information necessary for her to determine and verify the extent of and the accuracy of the values of all assets acquired during the marriage.”

C. A provision in a Decree of Dissolution or Settlement Agreement that awards “the balance of the assets” to one party is sufficient to divest the community interest in any community

asset not specifically listed in the Decree of Dissolution or Settlement Agreement.

Wife has brought a partition action. Wife alleges that the PERS retirement account of Husband was not disposed of in the underlying dissolution action and is, therefore, held by the parties as tenants in common.

It is undisputed that “[c]ommunity property not disposed of in a dissolution is owned thereafter by the former spouses as tenants in common.” *Yeats v. Yeats*, 90 Wn. 2d 201, 203, 580 P.2d 617 (1978) (emphasis added). Conversely, if an asset is disposed of in a dissolution, it is not subject to partition and is held by the person to whom it is awarded as his or her sole and separate property. It is likewise undisputed that the PERS 3 retirement account of the Husband is an “asset of the marriage.” CP 310.

The issue the trial court was asked to determine in the motion for summary judgment was a simple one. As the attorneys began arguing this case to the Superior Court judge, they stipulated as follows:

Your Honor, for purposes of speaking at today’s hearing, I’ve spoken to Mr. Denison about – I think he’s done an admirable job of distilling down the issue today and for purposes of summary judgment.

I agree that really the only issue before the court is whether or not language of balance of the assets is enough to have awarded a PERS retirement to Mr. in its entirety. So I know both sides kind of wanted to have their say about who collected mail and didn't

collect mail and that type of thing, but I think all of that, as Mr. Denison indicates, is really superfluous to that one key issue. It's whether or not there's actually an asset to partition.

VRP (01-15-2016) at page 4, line 18 – page 5, line 7 (emphasis added).

The court then stated, “I agree.” VRP (01-15-2016) at page 5, line 8.

Likewise, the court in *Yeats*, phrased the first issue similarly: “We must first determine whether there was a genuine issue of a material fact as to whether the property in question was disposed of by the settlement agreement.” *Yeats*, 90 Wn. 2d at 203.

Wife relies heavily on *Yeats*, and argues at length and repeatedly that the holding in *Yeats* was “that significant community assets may not be distributed by agreement upon divorce by boilerplate language which conceals from the approving court what is being distributed.” Appellant’s Brief, page 28 (emphasis added). She states that *Yeats* mandates that “community property of financial significance be distributed by clear reference enabling the court to see that the distribution is just and equitable.” Appellant’s Brief, page 33 (emphasis added). The assertion is made that the law in Washington is that “community assets of significance must be distributed by clear, specific reference and that boilerplate ‘all else’ and ‘balance of the assets’ language fails to achieve that distribution.” Appellant’s Brief, page 33 (emphasis added). The reliance on *Yeats* is misplaced, as stated by the Superior Court in its Findings and

Conclusions (CP 309) and the fall-out from such a reading of the *Yeats* case shows exactly why such a reading is unreasonable.

1. ***Yeats* holds that that assets need only be identified to the extent necessary for the court to approve the agreement or make a proper division.**

The court in *Yeats* clearly laid out its holding:

In summary, we hold that a settlement agreement or decree of dissolution must adequately identify the assets so as to permit the court to approve the agreement or make proper division. At minimum, the documents must put the parties and the court upon notice that the assets exist.

Yeats, 90 Wn.2d at 206. Wife has re-worded this holding to fit her theory of the case, but as will be shown, her interpretation is incorrect.

A summary of the facts in *Yeats* is necessary to understand the holding. William and Agnes Yeats, married in 1950 and filed for dissolution of their marriage in January 1974. Contemporaneously they signed a property settlement agreement. *Id.* at 203. The agreement was entitled “Separation and Support Agreement” and the following provisions are what the court felt were pertinent:

Section 2 Division of Property

With respect to property both real and personal acquired by Husband and Wife during their marriage and owned by them or either of them at the time of their separation, the same has heretofore been equitably divided and apportioned between the parties as set forth in Exhibit “A” attached hereto and they hereby ratify and confirm such division.

Section 6 Support and Maintenance of Wife

Wife accepts the payments specified in and to be made under this Section . . . in lieu of any interest in and to any and all property which Husband now owns or may hereafter acquire . . .

II. INSURANCE:

The Husband shall maintain in effect for the benefit of the Wife life insurance on the life of the Husband in the amount of \$10,000.00 naming the Wife as sole beneficiary thereof.

Id. at 204 (emphasis added).

The problem came with respect to some insurance policies.

At the time of the execution of the agreement there were nine life insurance policies on the life of the husband in the face amount of \$28,000 with a cash surrender value of approximately \$1,000. There were three policies on the life of the first wife with a face amount of \$7,550 and a cash surrender value of \$1,775. In addition, there was a \$75,000 policy on the husband's life owned and paid for by the employer....

None of the policies is mentioned, much less fully described in the settlement agreement.

Id. at 204–05. The court stated:

While one might assume that the parties intended that each receive the policies on his or her life, one cannot learn that from the terms of the agreement. It is pure speculation to determine what the parties intended or what the agreement meant. We hold that there must be sufficient specificity in settlement agreements or decrees of dissolution to identify the assets and their disposition. The requisite specificity is not present here inasmuch as the policies were not even mentioned.

Id. at 205 (emphasis added).

This then led the court to its holding:

In summary, we hold that a settlement agreement or decree of dissolution must adequately identify the assets so as to permit the court to approve the agreement or make proper division. At minimum, the documents must put the parties and the court upon notice that the assets exist.

Id. at 206 (emphasis added).

The first major difference between the *Yeats* case and the case at bar is the language contained in the Grants' agreement that was missing from the Yeats' agreement. The language contained in the Grants' agreement provided that Wife received \$178,000.00 and ownership of the family business. "JOHN RECEIVES THE BALANCE OF THE ASSETS AND OWNERSHIP OF THE HOUSE." CP 74 (emphasis added). The Yeats' agreement did not contain any such provision. The Yeats' agreement specifically provided that the assets of the parties had "heretofore been equitably divided and apportioned between the parties as set forth in Exhibit 'A' attached hereto...." *Yeats*, 90 Wn.2d at 204. Exhibit A was a listing of all the property divided by the parties, and the insurance policies were not contained in that Exhibit. There was no "catch-all" provision anywhere in the Yeats' dissolution documentation.

Wife cites to other cases to support her position, but they all have the same fatal flaw – no "catch-all" provision. Wife cites to *Ross v.*

Pearson, 31 Wn. App. 609, 643 P.2d 928 (1982). Again, the court was faced with a situation where “the findings and decree of dissolution made no specific provision for the disposition of the disability insurance payments....” *Id.* at 611. “If the property rights of the parties are not brought before the court in some appropriate manner, such rights are not, and cannot, be affected by the decree.”

Wife cites to *McGill v. Hill*, 31 Wn. App. 542, 644 P.2d 680 (1982) for the same proposition. In that case, Ms. McGill claimed that neither the divorce decree nor the separation agreement disposed of certain retirement and other employment benefits. *Id.* The separation agreement in that case provided that upon entry of a divorce decree “McGill would get the house, the car and all personal and household property except for nine items of personal property, which went to Hill, and the family silver, which would be held for the parties' daughter.” *Id.* at 545. The separation agreement contained mutual releases as follows:

13. Except as herein otherwise provided, Husband and Wife each hereby releases and forever discharges the other of and from all actions, causes of action, claims, rights, liabilities or demands whatsoever in law or in equity which either ever had or now has against the other, except any cause of action for divorce.... No (divorce decree) shall in any way affect any of the terms hereof and this Agreement shall survive any such decree....

14. Wife does hereby remise, release, quitclaim and forever discharge Husband and his estate of and from any and every claim of any nature and kind whatsoever, including but not limited to any

claim arising out of the marital relationship or any alleged business relationship or any constructive or implied trust that she now has or may hereafter have against Husband, or in and to and against his property, ... except only the rights accruing to Wife under this Agreement.

Id. at 545–46.

The court was required to apply Pennsylvania law to the case because of a choice of law provision in the agreement, and found that Pennsylvania courts “give great effect to mutual releases in settlement agreements.” *Id.* at 548. In *dicta* the court stated “the mutual release provisions of the agreement before us would be considered boilerplate language insufficient to dispose of the Boeing benefits.” *Id.* at 546. However, the language was sufficient under Pennsylvania law. The court never addressed the issue of whether the language of the separation agreement that McGill was to receive “all personal and household property except for nine items of personal property, which went to Hill” was sufficient to award her the entirety of the Boeing benefits. *McGill* is irrelevant and does not address the issue presented to this court.

This court is faced with a simple issue: Is language in a divorce decree that seeks to serve as a “catch-all” provision for property not listed sufficient to award that property to one party or another? Wife refers to the provision contained in the Grants’ separation agreement as

“boilerplate” language. The court in *Yeats* used the word “boilerplate” one time when it was referring to the following language:

Section 2 Division of Property

With respect to property both real and personal acquired by Husband and Wife during their marriage and owned by them or either of them at the time of their separation, the same has heretofore been equitably divided and apportioned between the parties as set forth in Exhibit “A” attached hereto and they hereby ratify and confirm such division.

Section 6 Support and Maintenance of Wife

Wife accepts the payments specified in and to be made under this Section . . . in lieu of any interest in and to any and all property which Husband now owns or may hereafter acquire . . .

II. INSURANCE:

The Husband shall maintain in effect for the benefit of the Wife life insurance on the life of the Husband in the amount of \$10,000.00 naming the Wife as sole beneficiary thereof.

Yeats, 90 Wn.2d at 204. It is not clear what Wife believes the definition of “boilerplate” is, but the language contained in the Grant’s agreement is most certainly not boilerplate.

“Boilerplate” is defined as language “which is used commonly in documents having a definite meaning in the same context without variation; used to describe standard language in a legal document that is identical in instruments of a like nature.” *Black’s Law Dictionary*, Sixth Edition (emphasis added). The language used in the agreement between

the Grants is not “standard language in a legal document.” This is language that was drafted and used by the parties specifically for their agreement. It is language used by the parties to avoid the necessity of listing out each and every personal property item of the parties. It is not language preprinted on a form or contained in every separation agreement entered into between married couples.

This language was unique to these parties in this circumstance. This was language used to address a specific issue, that being that the parties did not desire to list all assets owned by them at the time of the dissolution. Therefore, the language was sufficient and adequate to dispose of the “balance of the assets.” It was a “catch-all” provision, not a “boilerplate” provision.

The case at bar is more akin to the case of *Robinson v. Robinson*, 37 Wn.2d 511, 225 P.2d 411 (1950), which is directly on point and controls in this matter. In *Robinson*, the dissolution decree included a provision that awarded the husband all property not specifically awarded to the wife. The decree distributed certain property to the wife, but provided that the husband was awarded “as his separate property, all other property acquired by the parties hereto prior to marriage, or during the years of their marriage....” *Id.* at 513. After entry of the decree, the IRS issued a refund for a tax year during the marriage. The Washington

Supreme Court held that the refund was not newly acquired and that the husband was entitled to the tax refund under the terms of the decree.

[B]y the terms of the property settlement agreement and stipulation which became a part of the interlocutory decree, the respondent had renounced her interest in any property not specifically awarded to her, and all property not so awarded to her had been awarded to appellant; consequently, there was no newly discovered property before the court for distribution.

Id. at 515. A similar situation was addressed by the Supreme Court in *Sears v. Rusden*, 39 Wn. 2d 412, 235 P.2d 819 (1951).

In *Sears* the Supreme Court stated the general rule regarding property not disposed of in a dissolution action, but added an explanation:

As to community property not disposed of by an interlocutory order of divorce, the parties become tenants in common. The reason for this rule is that the court did not exercise its jurisdiction over the property. In the oft-cited case of *Ambrose v. Moore*, 46 Wash. 463, 90 P. 588, 589, 11 L.R.A., N.S., 103, we said: "... If the property rights of the parties are not thus brought before the court in some appropriate manner, such rights are not and cannot be affected by the decree. *Philbrick v. Andrews*, 8 Wash. 7, 35 P. 358. Where no disposition of the property rights of the parties is made by the divorce court, the separate property of the husband prior to the divorce becomes his individual property after divorce, the separate property of the wife becomes her individual property, and, from the necessities of the case, their joint or community property must become common property. After the divorce there is no community, and in the nature of things there can be no community property. The divorce does not vest or divest title, the title does not remain in abeyance, and it must vest in the former owners of the property as tenants in common. ..."

Id. at 416.

Here, as in *Robinson* and *Sears*, the asset at issue (the PERS 3 account) was an asset acquired during the marriage and was not newly acquired. It was an asset over which the court exercised its jurisdiction when it awarded the “balance of the assets” to Husband. Wife renounced any interest she had in the “balance of the assets” and those were awarded to Husband as his separate property. The court approved the Marital Settlement Agreement by entering the decree. When the decree was signed, “it became more than the stipulation of the parties - it became the court's disposition of the property - and the reciprocal rights and obligations as set forth therein were definite, binding on the parties, and merged in the decree. *Robinson*, 37 Wn.2d at 517. Under the express terms of the decree and the Marital Settlement Agreement, Husband was awarded the PERS 3 account as his sole and separate property.

2. The separation agreement put the parties and the court on notice that additional assets existed.

The court in *Yeats* held that at a minimum, “the documents must put the parties and the court upon notice that the assets exist.” *Yeats*, 90 Wn.2d at 206. It is undisputed that the documents submitted to the court did not list each and every asset of the parties. That was not required by the court in *Yeats*. Rarely in divorce cases are all assets listed in the final orders or in settlement agreements. This would be an impossibility or at

the very least a monumental and expensive task to perform. Divorce decrees would be hundreds of pages long. Wife's reading of the case law is that ANY item not specifically listed would be held by the couple as tenants in common – every fork, spoon, towel, light bulb, and pillow case would need to be listed specifically or it would be held by the parties jointly.

Sensing the absurdity of such a result, Wife suggests that the holdings in cases she has cited requires “that significant community assets may not be distributed by agreement upon divorce by boilerplate language which conceals from the approving court what is being distributed.” Appellant's Brief, page 28 (emphasis added). She states that *Yeats* mandates that “community property of financial significance be distributed by clear reference enabling the court to see that the distribution is just and equitable.” Appellant's Brief, page 33 (emphasis added). She posits that the law in Washington is “community assets of significance must be distributed by clear, specific reference and that boilerplate ‘all else’ and ‘balance of the assets’ language fails to achieve that distribution.” Appellant's Brief, page 33 (emphasis added). However, nowhere in the cases cited by Wife does the requirement of “significance” or “financial significance” exist.

Yeats states as follows:

In summary, we hold that a settlement agreement or decree of dissolution must adequately identify the assets so as to permit the court to approve the agreement or make proper division. At minimum, the documents must put the parties and the court upon notice that the assets exist.

Id. (emphasis added). There is no mention that these assets must be significant or financially significant. The court stated that the assets must be “adequately identified” and the court must simply be put on notice “that the assets exist.”

Wife’s position that the cases hold that disclosable assets must be “significant” would cause more problems than it would solve. The question becomes, “What is a significant asset?” Is an asset’s significance related to the value of the asset alone or the value of the asset when looked at in relation to the value of all the assets in the community? Are separate assets included in the determination of whether a community asset is significant? Does the type of asset factor in to the asset’s significance?

Yet, none of the cases cited by Wife attach the word “significant” to the requirement of identification of assets. But has the Supreme Court, in its decision in *Yeats* and related cases, required parties and the trial courts to list every single asset in a dissolution decree for that decree to act as a document fully and finally determining the property rights of a divorcing couple? The answer is no.

This Court need look no further than the new family law forms required to be used by all litigants in family law matters. RCW 26.18.220 requires the administrative office of the courts to develop “standard court forms and format rules for mandatory use by litigants in all actions commenced under chapters 26.09....” RCW 26.18.220(3) provides the penalty for not using these forms: “A party's failure to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. However, the court may require the party to submit a corrected pleading and may impose terms payable to the opposing party or payable to the court, or both.” For years, participants in Washington Family law cases have been required to use these standard court forms.

This year, the Access to Justice Board's Pro Se Project converted the mandatory domestic relations pattern forms into plain language forms. The goal of the change was to make the forms more “user-friendly” for pro se litigants. Every Supreme Court Justice signed a letter to Friends of Access to Justice regarding the Plain Forms Project on January 5, 2012. The justices referred to the old forms as “difficult to comprehend and complete because of legalistic and sometimes archaic language.”¹ In discussing the process for changing and mandating the use of the new

¹ http://www.courts.wa.gov/forms/forms_comment/plainLanguage/ATJ_PlainFormsSupport.pdf.

forms, the justices stated that the forms “will undergo vigorous field testing to ensure they meet all legal requirements under statute and court rule.” *Id.* Working with the administrative office of the courts, these new forms became mandatory on July 1, 2016. These are now the forms required to be used by all family law litigants and courts.

Pursuant to RAP 10.4(c) and attached as Appendix A is a copy of the relevant language in the new Final Divorce Order (Dissolution Decree) – Form FL Divorce 241. Paragraphs 8 and 9 address the personal property of the spouses and the division of that property. In Paragraph 8, there are six boxes the litigants can check regarding personal property. The first box provides, “The personal property that Petitioner now has or controls is given to Petition as his/her separate property. No transfer of property between Petitioner and Respondent is necessary.” The same language is used in Paragraph 9 for the Respondent. Both paragraphs allow for the parties to list out assets, but it is not required. These court approved and mandatory forms allow litigants to simply provide that the assets have been divided and each party keeps what they now have or control.

The position of Wife runs completely counter to these new forms as well as the case law. Wife may argue that *Yeats* conflicts with *Robinson* and *Sears*, and therefore, overrules them in that *Yeats* was decided most recently. However, *Yeats* does not conflict with *Robinson*

and *Sears*. *Yeats* also does not conflict with the new forms mandated for use by family law litigants. *Yeats* instead stands for the proposition that if parties are going to list out what property is to go to each litigant without some sort of catch-all provision, then every item must be listed. Failure to list items could result in those items being held by the parties as tenants in common. However, if parties check box #1 in the new mandatory forms or list out a few assets and then a catch-all provision that the balance of the assets go to one of the parties, a complete listing is not necessary. The parties and the court are put on notice that additional assets exist. This meets the requirement of *Yeats* that at a minimum “the documents must put the parties and the court upon notice that the assets exist.” *Yeats*, 90 Wn. 2d at 206. The parties in *Yeats* provided in their agreement that the property “has heretofore been equitably divided and apportioned between the parties as set forth in Exhibit A attached hereto....” *Id.* at 204 (emphasis added). Then the court noted regarding the life insurance policies in question that “[n]one of the policies is mentioned, much less fully described in the settlement agreement.” *Id.* at 205. The parties in *Yeats* chose to list assets in an attached Exhibit A, and did not include all the assets and did not include catch-all language.

The Grants, in contrast, attached their settlement agreement as an Exhibit, but included catch-all language intended to dispose of any and all

assets not listed in the division. All the cases and the forms can be read in harmony with each other. In addition, the court was made aware of retirement accounts. Wife brought the husband's retirement to the court's attention twice at the initial hearing on the Decree.

The Court: Okay. I don't understand what the loan calculator's in here for.

Wife: Well, as opposed to taking out his retirement and all that and get fines, penalties, he's going to pay me quarterly. Or, if you wanted to break it down to monthly, it would be 2,000 a month. And that way he can still, you know, keep his –

(CP 47, lines 2-8) (emphasis added).

The Court: He is a CPA?

Wife: Uh-huh. As I said, the reason he set it up like that was as opposed to take everything out of his retirement --

(CP 52, lines 13-15) (emphasis added).

The court was placed on notice that there were additional assets not listed in the Decree. Those assets were going to Husband pursuant to the Marital Settlement Agreement. Nothing more is required.

3. Husband met all fiduciary requirements to Wife by disclosing to her and providing her with all information necessary for her to determine and verify the extent of and the accuracy of all assets acquired during marriage.

Wife goes to great lengths to lay out the law with respect to the fiduciary duties owed by spouses to each other. That will not be repeated

here. She cites to the Division III case of *Seals v. Seals*, 22 Wn. App. 652, 590 P.2d 1301 (1979) as the appellate decision “nearest to the issues in the case at bar respecting the consequences of active concealment of community assets.” Brief of Appellant, pages 36-37.

Seals dealt with a husband who had lied in his interrogatory responses, and did not amend those responses prior to trial. Mr. Seals had indicated under oath that he did not own stock in any firm or corporation when, in fact, he did. “Where a party to a dissolution action, in clear and unambiguous terms, in response to interrogatories (CR 33) asserts the nonexistence of a fact, of which that party has or should have knowledge, the requesting party may rely on such statements.” *Seals*, 22 Wn. App. at 656.

In addition to interrogatories, Requests for Admission are also discovery devices used by parties in litigation. CR 36(a) allows either party to serve on the other party “a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.” Any matter admitted under CR 36 is “conclusively established unless the court on motion permits withdrawal or amendment of the admission.” CR 36(b)

(emphasis added). This matter has been discussed at more length in Section B above.

As indicated above, Wife requested that Husband admit he had “provided Kathleen Grant all records, statements and other written information necessary for her to determine and verify the extent of and the accuracy of the values of all assets acquired during the marriage.” (CP 275) Husband admitted that he had done just that. (CP 280) This was consistent with every declaration he had filed previously. He admitted that he provided Wife with all written information necessary for her to verify not only the extent of all property acquired during the marriage, but also the value of that property.

This issue was brought up in the briefing for the summary judgment motion. (CP 266-267 and CP 274-280) Wife never made any motions to amend or withdraw this particular admission. Therefore, for purposes of granting or denying the motion for summary judgment, it has been conclusively established that Husband provided Wife “with all records, statements and other written information necessary for her to determine and verify the extent of and the accuracy of the values of all assets acquired during the marriage.”

Therefore, Husband has met any and all fiduciary duties he may have had to the wife regarding his retirement asset. Wife cannot now

come before the court arguing a breach of fiduciary duty when her own discovery requests show there was no such breach. If one is to believe Wife, she did not read any of this documentation or look at any of these records, but the fact remains that Husband provided those to her so she knew or should have known of the existence of all assets acquired during the marriage.

D. The trial court record supports the award of fees.

The court awarded Husband a judgment in the amount of \$10,158.15 for attorney fees and costs pursuant to RCW 26.09.140. Husband filed a motion and declaration for fees along with a financial declaration. Husband stated as follows:

7. I cannot afford the enormous amount of attorney fees this has cost me. The court awarded me attorney fees in the amount of \$6,762.72 after the hearing in the dissolution action on the CR 60 motion. That was simply taken out of the remaining property equalization payments I was to make to her. She did not actually pay me directly. I had already expended that amount and have had to slowly recoup the money by not paying her the monthly payments she was owed.

8. I have now expended \$9,884.15 in additional attorney fees under the partition action for a case that clearly should not have been filed.

CP 292.

Wife does not dispute the court's authority to award fees under RCW 26.09.140. Brief of Appellant, page 45. An award of attorney fees under RCW 26.09.140 is discretionary and is reviewed for abuse of discretion. *In re Marriage of Williams*, 84 Wash. App. 263, 272, 927 P.2d

679, 684 (1996). “An award of attorney's fees rests with the sound discretion of the trial court, which must balance the needs of the spouse requesting them with the ability of the other spouse to pay.” *Kruger v. Kruger*, 37 Wash. App. 329, 333, 679 P.2d 961, 963 (1984). However, Wife made it impossible for the court balance these two interests by providing no response to the motion and providing no financial information whatsoever.

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn. 2d 39, 46–47, 940 P.2d 1362 (1997). A decision is manifestly unreasonable “if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *Id.* at 47, 940 P.2d 1362.

Wife now argues that despite her failure to file anything in response to the motion for attorney fees, the court somehow erred in its award. Husband provided a Financial Declaration in support of his request for fees showing a net income of only \$4,538.00 per month and expenses of \$2,660.00 per month along with a contribution of \$2,000.00

per month to his Deferred Compensation account. Again, Wife provided nothing about her financial situation. Fees for the partition action were in excess of \$10,000.00, an amount that Husband stated he could not afford.

Wife now argues that the award of fees is not supported because she “had to sell the business she operated on [*sic*] a loss for years for only \$5,000.00 net.” Brief of Appellant, page 46. This was a declaration Wife had filed August 11, 2014, in an entirely different action. She did not provide any information on when the business was sold or the circumstances surrounding that sale. She certainly did not provide any information about her current financial picture, and never even stated she could not afford to pay the requested fees. This lack of information should be sufficient to warrant an award of fees. The award is not manifestly unreasonable or based on untenable grounds or untenable reasons considering the information with which the court was presented.

Regarding attorney fees on appeal, the courts have consistently held that when (1) a party has complied with RAP 18.1(b) by presenting argument with merit, (2) a party has properly requested fees in their brief, (3) a party has filed an affidavit of financial need at least 10 days before argument, and (4) the other party did not counter with an affidavit proving inability to pay, the requesting party's request for attorney fees is granted. *See Mansour v. Mansour*, 126 Wash.App. 1, 17, 106 P.3d 768, 776

(2004); *In re Marriage of Fox*, 58 Wash.App. 935, 940, 795 P.2d 1170 (1990). The same holds true for fees at the trial court level.

Additionally, this is a case of bad faith on the part of Wife. The court was provided voluminous information in the summary judgment motion. While much of it did not directly address the issue of whether the PERS 3 plan had been disposed of by the court in the dissolution action, it did address the bad faith exhibited on the part of the Plaintiff. Husband provided a lengthy declaration about the history of the relationship and the PERS retirement. He explained how Wife's lack of knowledge was simply not believable. He provided copies of newsletters and statements that came to the house, and explained how the couple had changed from PERS 2 to PERS 3 after lengthy discussions. The couple's children explained how their mother knew about this retirement account.

Wife's inconsistent prior statements were brought to light. However, most telling was Wife's complete refusal to explain to the trial court HOW she found out about this asset. As pointed out by Husband in his declaration in favor of summary judgment, the superior court asked pointedly at prior hearings in the dissolution action for an explanation and none was given. Defendant brought up the issue again in his motion for summary judgment, and again, Wife did not explain how she came to know about this account. CP 31, Paragraph 21.

The express language of the agreement was clear that the “balance of the assets” went to Husband, and Wife knew that there were some assets not listed that were going to him under this language. Wife was provided all “records, statements and other written information necessary for her to determine and verify the extent of and accuracy of the values of all assets acquired during the marriage.” CP 275 and 280. Wife did not prevail on her CR 60 motions and then filed a partition action when her entire argument was that this was a newly discovered asset – a matter that should have been addressed in a CR 60 motion within a year of the finalization of the divorce.

Wife knew of the existence of this asset. It is not reasonable to think otherwise. To bring a partition action in these circumstances shows bad faith on the part of Plaintiff. As argued by Husband in his briefing, Wife had plenty of funds to pay attorneys to file multiple motions, drive hundreds of miles, and spend quite a lot of time pursuing this issue, not only in the partition action, but also in the numerous motions she has filed in other cases. Money did not appear to be an issue with Wife. Husband filed a motion for attorney fees after prevailing on the summary judgment motion, and Wife provided no response to that motion at all. CP 313, line 11. The court’s decision was not manifestly unreasonable or based on untenable grounds or untenable reasons.

E. The interest rate set by the trial court was the proper rate.

Finally, Wife argues that the court should have set a lower interest rate, citing *In re Marriage of Knight*, 75 Wn. App. 721, 800 P.2d 71 (1994). This argument has no legal basis whatsoever. The *Knight* case states specifically as follows:

Although, in the context of dissolution actions trial courts have discretion to reduce the rate of interest on deferred payments, a trial court abuses this discretion if it provides for an interest rate below the statutory rate without setting forth adequate reasons for doing so.

Id. at 731 (citations omitted). RCW 4.56.110(4) provides that “judgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof.” (Emphasis added). Pursuant to RCW 19.52.020 the maximum rate allowable is 12 percent, which is the interest rate the court set. The court does not need to “explain itself” if it sets the rate at 12 percent. It would need to do so if it set the rate lower than 12 percent.

F. Husband requests that the court award him attorney fees and costs for this appeal pursuant to RAP 18.1

Pursuant to RAP 18.1 Husband respectfully requests an award of attorney fees on appeal. Wife did not contest the court’s ability to award attorney fees in the underlying partition action. The same reasoning for the award of fees holds true in this matter. Husband has now had to

expend thousands more dollars to address this appeal. Despite the fact that the Wife's own discovery requests prove that she was provided all information necessary to determine the extent and value of all assets, she has proceeded forward with this appeal. Despite the fact that she provided no financial information whatsoever to the superior court in response to a request for fees, she appeals the award of fees stating that the court failed to consider her ability to pay. Despite the fact that the statutes are clear on the amount of interest a court must charge on a judgment, Wife appeals that award of interest with an argument that has no basis in fact or law, and is, in fact, in direct contravention of existing law and statutes.

Wife has repeatedly come before courts in this state attempting to get relief to which she is not entitled. As pointed out in the declarations of Husband, Wife took her property award, spent it, and now is seeking an additional award by feigning ignorance of the existence of an asset. Her declarations over the years have shifted and changed depending on the theory of her case at the time. She started down this road in 2013 stating that she "thought, or assumed that the 401(k), IRAs, and some other investments was the total of our savings for retirement and would be used in conjunction with our social security." CP 96. She ended the journey in 2016 claiming Husband verbally abused her, actively hid the PERS Retirement from her, and intentionally lied about it. CP 256-262.

This appeal is not made in good faith. Wife either knew about this retirement account or reasonably should have known about it. The courts in Washington have adopted mandatory forms that allow parties to do exactly what the Grants did. They can simply say to the court that each party will be keeping the property they have in their possession or under their control. This divorce has been final for over 6 years, yet Wife waited until Husband was almost done with his property equalization payments to her to file her motions and her petition.

Husband is in need of having his fees paid in this matter. The financial declaration filed contemporaneously herewith shows that Husband's net income per month is only \$4,538.00 and his expenses are \$2,660.00 per month leaving \$1,878.00 per month and he is putting away \$2,000.00 per month in his Deferred Compensation account for retirement. He does not have the ability to pay the large amount of fees generated by an appeal of this nature.

Wife, on the other hand, has sufficient funds to not only pay multiple attorneys to argue motions and file lawsuit across the state, but also to pay a new lawyer to file an appeal where she is not asking for fees. She obviously has the means to pay her own fees, and considering the nature of the partition action and the baseless nature of this appeal, she

should be required to pay attorney fees on appeal as well as the underlying fees in Superior Court.

IV. CONCLUSION

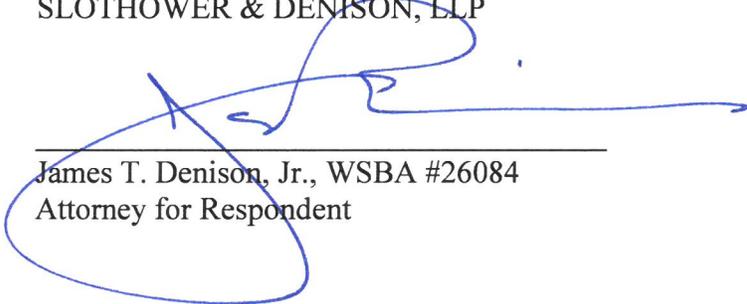
Pursuant to Washington law including the new mandatory pattern forms, litigants in a dissolution action are allowed to dispose of assets without specifically listing each and every piece of community and separate property. There are no issues of material fact with respect to the granting of summary judgment on the limited issue of whether or not the Marital Settlement Agreement of the parties disposed of the PERS 3 retirement account of the Husband. It did. Wife was provided all information necessary for her to determine and verify the extent of and the accuracy of the values of all assets acquired during the marriage. The fact that Wife did not avail herself of that opportunity does not mean that the court did not dispose of the assets as requested by the parties in their Marital Settlement Agreement. Wife's willful ignorance of the nature and extent of the assets does not render the agreement invalid. Summary judgment in this matter was proper.

Finally, the award of fees and costs was pursuant to statute and the Wife's failure to file any financial documentation justified the court's award of fees and costs. Husband asks for an additional award of fees on appeal.

DATED this 5TH day of October 2016.

Respectfully submitted:

LATHROP WINBAUER, HARREL,
SLOTHOWER & DENISON, LLP



James T. Denison, Jr., WSBA #26084
Attorney for Respondent

APPENDIX A

8. Petitioner's Personal Property (possessions, assets or business interests of any kind)

- The personal property that Petitioner now has or controls is given to Petitioner as his/her separate property. No transfer of property between Petitioner and Respondent is required.
- The personal property listed as Petitioner's in the separation contract described in **5** above is given to Petitioner as his/her separate property.
- The personal property listed in Exhibit ____ is given to Petitioner as his/her separate property. This Exhibit is attached and made part of this Order.
- The personal property listed below is given to Petitioner as his/her separate property. *(Include vehicles, pensions/retirement, insurance, bank accounts, furniture, businesses, etc. Do not list more than the last four digits of any account number. For vehicles, list year, make, model and VIN or license plate number.)*

1.	5.
2.	6.
3.	7.
4.	8.

- The court does not have jurisdiction to divide personal property.
- Other (specify): _____

9. Respondent's Personal Property (possessions, assets or business interests of any kind)

- The personal property that Respondent now has or controls is given to Respondent as his/her separate property. No transfer of property between Petitioner and Respondent is required.
- The personal property listed as Respondent's in the separation contract described in **5** above is given to Respondent as his/her separate property.
- The personal property listed in Exhibit ____ is given to Respondent as his/her separate property. This Exhibit is attached and made part of this Order.
- The personal property listed below is given to Respondent as his/her separate property. *(Include vehicles, pensions/retirement, insurance, bank accounts, furniture, businesses, etc. Do not list more than the last four digits of any account number. For vehicles, list year, make, model and VIN or license plate number.)*

1.	5.
2.	6.
3.	7.
4.	8.

- The court does not have jurisdiction to divide personal property.
- Other (specify): _____