

66138-8

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No. 66138-8-1

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

In re the Marriage of:

BARBARA CONGLETON,

Respondent,

v.

JAY CONGLETON,

Appellant.

BRIEF OF APPELLANT

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A. INTRODUCTION

Jay Congleton (“Jay”) and Barbara Congleton (“Barbara”) divorced after a short-term marriage. Jay entered the marriage with considerably more separate property than Barbara did. The trial court found the couple’s community home had been purchased prior to the marriage with Jay’s clearly traceable separate property. Yet the trial court failed to divide the equity in the couple’s community home in a fair and equitable manner reflecting Jay’s contribution as required by RCW 26.09.080. The court erroneously awarded Barbara the community home without compensating Jay for his contribution. The trial court’s findings regarding the community home contain arithmetical errors, are self-contradictory and incomplete, and are internally inconsistent, requiring remand for clarification and compliance with RCW 26.09.080.

The court erred in ordering the parties to each pay 50% of Federal income taxes for 2009. In its decree of dissolution, the court found that Barbara had removed funds from a bank account which had been set aside to pay taxes, and that she had misrepresented to Jay, the couple’s accountant, and the IRS that she had made quarterly tax payments when she had not. The court ordered that Jay and Barbara each pay half the outstanding tax liabilities, but specified that Barbara’s liability was offset against a promissory note to Jay. However, neither the findings of fact nor

the decree of dissolution spell out what that promissory note is, or how much it is for. The decree, insofar as it relates to Federal taxes, is thus unenforceable on its own terms.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error¹

1. The trial court erred in entering its judgment on September 27, 2010.
2. The trial court erred in entering Finding of Fact (“FF”) 12.
3. The trial court erred in entering FF 22.
4. The trial court erred in entering FF 26.
5. The trial court erred in awarding the community home to Barbara without compensating Jay for the contribution of his separate property.
6. The trial court erred in entering a decree of dissolution ordering Jay and Barbara to each pay 50% of Federal taxes for 2009 without defining Barbara’s liability which was to be offset against a promissory note to Jay.

¹ A copy of the findings of fact is in the Appendix.

(2) Issues Pertaining to the Assignments of Error

1. Did the trial court err in awarding Barbara the Odin Way house where the court found a 50/50 the home had been purchased with Jay's separate property? (Assignments of Error Numbers 1, 2, 4, 5)

2. Did the trial err in ordering Jay and Barbara to each pay 50% of Federal taxes for 2009 without defining Barbara's liability which was to be offset against a promissory note to Jay? (Assignments of Error Numbers 1, 3, 6)

C. STATEMENT OF THE CASE²

Jay and Barbara were married in July 2003. CP 494. Jay is a construction consultant, primarily working on large commercial and industrial projects. RP 232. Barbara is a property manager. CP 497. Both Jay and Barbara had been married before. CP 496. The marriage was Barbara's third. RP 166.

The couple did not come into the marriage with equal assets. Jay entered the marriage with approximately a half a million dollars, whereas Barbara had only approximately \$15,000 in assets at the time they wed. CP 512.

² The Court should note that a number of the documents in this case were filed under seal. As reflected in the index to the clerk's papers, CP 743-1023 and CP 119-1183 are financial documents sealed by order of the trial court.

Before they were married, Jay and Barbara purchased a home in Bothell, Washington (“the Odin Way house”).³ RP 251-52; CP 499. Jay paid the \$30,000 down payment as well as a \$66,000 second mortgage necessary to close on the home out of his separate property. RP 252-53; CP 499-500, 501, 502. After the closing, Jay also paid approximately \$32,000 for various improvements to the Odin Way house. CP 500.

Just two weeks after they were married, Jay was laid off from his job. RP 257; CP 498. He sued the employer, PCL, for wrongful termination and discrimination. RP 258; CP 502. The case settled. RP 259; CP 502. Out of the settlement amount, Jay distributed \$30,000 into his 401K retirement account, paid off the \$66,000 second mortgage on the Odin Way house, and purchased a one-week time share in a condominium in Hawaii for \$56,000. RP 262, 266-67, 273-74, 562-63; CP 502.

After losing his job at PCL, Jay decided to go into business for himself as Vanguard Consulting LLC. RP 281; CP 503. After attending an investment seminar, Barbara suggested they establish a self-directed 401K plan for the business (“the 401K”). RP 283; CP 503. As a self-directed plan, the 401K could invest in various assets, including real estate. RP 283; CP 503. Jay deposited \$50,000 (predominantly as a

³ At the outset of the marriage, the couple lived in a rented condominium. RP 244; CP 499. They eventually purchased the condo with a \$10,000 down payment taken from Jay’s retirement account. *Id.* The couple sold the condo in 2006 and spent the proceeds of the sale. RP 248-49; CP 499.

rollover from his prior PCL 401K and proceeds from the sale of the home from his first marriage) and an additional \$30,000 from his PCL settlement into the 401K. RP 284, 287, 288; CP 503. Jay also contributed approximately \$20,000 of his earnings during the marriage to the account. CP 503. The 401K fund also purchased 20 one-ounce gold Krugerrands for approximately \$15,000. RP 293, 311.

Barbara was eager to provide housing for her grown son and his family and wanted to buy property he could rent. RP 347-48; CP 504. Using \$80,000 of the funds Jay had contributed to the plan, the 401K plan purchased a rental property for Barbara's son and his family to live in ("the Rental Property"). RP 291, 293, 347-48; CP 503-04. Although the Rental Property was to be the home for Barbara's son, the mortgage on the Rental Property was guaranteed solely by Jay. CP 504.

Throughout the marriage, Barbara handled *all* the financial affairs for the couple. CP 506. She handled the bookkeeping for Jay's business, including making quarterly tax payments. RP 299; CP 506. Barbara, who had a degree in financing/accounting, was responsible for paying the quarterly tax payments to the IRS. RP 299; CP 506. Jay did not make the quarterly tax payments until after the separation. RP 299. From January 2008 until the end of August 2009, Barbara withdrew money from the business savings account which had been set aside for quarterly income

tax payments. CP 507. She did not, however, actually make those payments, nor did she tell Jay that she was not making the payments. RP 298, 314, 416; CP 507. Barbara signed the 2008 income tax return indicating that the quarterly tax payments had been made, when in fact, they had not. RP 299, 306-07; CP 508. As a result of her failure to pay the taxes, the couple had a tax obligation of \$40,000 for 2008 and a \$25,000 obligation for 2009 due to Barbara's self-direction of the community assets. CP 508.

Jay and the couple's accountant were able to reach an agreement with the IRS whereby Jay would make \$1,000 monthly payments toward the 2008 tax debt. RP 316. The court ordered the gold Krugerrands held by the 401K to be sold to satisfy the IRS agreement. RP 316. The proceeds of the sale were held in the trust account of Jay's trial attorney. RP 318.

Throughout the time they were married, Barbara spent significantly more than her personal earnings on herself and on behalf of her adult son and his family without ever disclosing the nature and extent of the debt she was accumulating to Jay. RP 344-45; CP 508. Her financial *legerdemain* ultimately led to the collapse of the marriage.

The couple's marriage began to deteriorate in 2009 after Jay discovered that Barbara had an \$11,000 balance on a Nordstrom credit

card he was unaware of. RP 328, 330-33. Barbara refused to explain what the charges were for. RP 333. As the relationship deteriorated, Barbara refused to speak with Jay on any subject of significance at all. CP 327-28. Jay repeatedly sought to get Barbara to go to marriage counseling with him, but she steadfastly refused. RP 328.

Jay and Barb separated in August 2009. CP 494. After the separation, Jay paid \$1,000 per month maintenance to Barbara to offset the mortgage payments on the Odin Way house. RP 359.

After four days of hearings, the trial court entered findings of fact on September 2, 2010. The court found the marriage to have been a “short-term marriage” and that a 50/50 split of the assets would be neither fair nor reasonable given that the parties entered into the short-term marriage with very different assets. CP 497, 512. Nevertheless, the court awarded 100% of the Odin Way house to Barbara. CP 510. The court entered an amended decree of dissolution nunc pro tunc (“the Decree”) on September 27, 2010.⁴ CP 616-27. Jay filed a motion for reconsideration, which the court denied the motion for reconsideration. CP 628-35, 741-42. This timely appeal follows.

⁴ The court entered an initial decree of dissolution reserving numerous issues pending the entry of findings of fact on August 5, 2010. CP 456-69.

D. SUMMARY OF ARGUMENT

The court provided a clear and accurate history of the case, and entered many findings to which Jay does not assign error. However, when the court put down the pen and took up a calculator it began to err. The trial court's findings regarding the Odin Way house contain arithmetical errors, are self-contradictory and incomplete, and are internally inconsistent. The trial court recognized that the Odin Way house had been purchased prior to the marriage with Jay's separate property. It discussed the necessity of reimbursing Jay for his separate contributions as well as the necessity of dividing the community equity in the home. Yet in its findings of fact and the Decree the court neglected to order such a reimbursement. Thus, the court failed to divide the property between the parties in a fair and equitable manner as required by RCW 26.09.080.

The trial court ordered Jay and Barbara to each pay 50% of the outstanding Federal income tax for 2009. In its decree, the court stated that Barbara's liability for the taxes had been offset against a promissory note to Jay. Yet nowhere in the decree or the findings of fact is that promissory note laid out or described in any fashion. The decree, insofar as taxes are concerned, is thus unenforceable.

E. ARGUMENT

(1) Standard of Review

A trial court's division of property in a decree of dissolution is reviewed for a manifest abuse of discretion. *Buchanan v. Buchanan*, 150 Wn. App. 730, 753, 207 P.3d 478 (2009). A trial court abuses its discretion if its decision is manifestly unreasonable, meaning that its decision is outside the range of acceptable choices, or is based upon untenable grounds. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). This Court reviews the trial court's factual findings for substantial evidence, which is evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *In re Marriage of Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007), *review denied*, 163 Wn.2d 1055 (2008). On review, this Court considers whether the property division is fair and equitable based on all the facts and circumstances. *Stachofsky v. Stachofsky*, 90 Wn. App. 135, 147, 951 P.2d 346 (1998), *review denied*, 136 Wn.2d 1010 (1998).

(2) The Distribution of Property in Dissolution Actions

All property, both community and separate, is before the court for distribution in a dissolution action. *Friedlander v. Friedlander*, 80 Wn.2d 293, 305, 494 P.2d 208 (1972). In a dissolution proceeding, the trial court must distribute the marital property in a manner that is "just and equitable

after considering all relevant factors.” RCW 26.09.080. The list of nonexclusive factors the court should consider includes:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage; and
- (4) The economic circumstances of each spouse at the time the division of property is to become effective.

Id.

These statutory factors are not limiting and the trial court may consider other factors such as the age, health, education, and employability of the couple. *See In re Marriage of Tower*, 55 Wn. App. 697, 699, 780 P.2d 863 (1989), *review denied*, 114 Wn.2d 1002 (1990). No single factor is conclusive or given greater weight than the others. *See In re Marriage of Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97 (1985), *cert. denied*, 473 U.S. 906, 105 S. Ct. 3530, 87 L.Ed.2d 654 (1985); *DeRuwe v. DeRuwe*, 72 Wn.2d 404, 408, 433 P.2d 209 (1967).

A fair and equitable property division does not require mathematical precision. *See, In re Marriage of Crosetto*, 82 Wn. App. 545, 557, 918 P.2d 954 (1996). *See also, In re Marriage of Clark*, 13 Wn. App. 805, 810, 538 P.2d 145, *review denied*, 86 Wn.2d 1001 (1975) (noting the key to an equitable distribution is fairness). Nor does it require the court to divide the property equally. *See In re Marriage of Rockwell*,

141 Wn. App. 235, 255, 170 P.3d 572 (2007), *review denied*, 163 Wn.2d 1055 (2008) (affirming 60/40 property distribution). Instead, fairness is obtained by considering all the circumstances of the marriage and by exercising discretion, not by utilizing inflexible rules. *See Tower*, 55 Wn. App. at 700. Separate property is not generally subject to division between the parties. RCW 26.16.010. Separate property will remain separate property through changes and transitions, if the separate property remains traceable and identifiable *In re Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003). Although the character of property is a relevant factor to its distribution, it is not determinative. *In the Matter of the Marriage of Konzen*, 103 Wn.2d at 478.

In a short-term marriage, such as the trial court found this one to be, a just and equitable distribution leaves the parties as the marriage found them. 2 Wash. State Bar Ass'n, Family Law Desk Book, § 32.3(3) (2d ed. 2000 & Supp. 2006). *See also, In re Marriage of Terry*, 79 Wn. App. 866, 871, 905 P.2d 935 (1995) (where marriage is of short duration, trial court may return the parties to their premarital relative financial conditions); *Bundy v. Bundy*, 149 Wash. 464, 466, 271 P. 268 (1928); Robert W. Winsor, *Guidelines for the Exercise of Judicial Discretion in Marriage Dissolutions*, *Wash. St. Bar News*, 14, 16 (Jan. 1982).

(3) The Trial Court Erred in Awarding the Odin Way House to Barbara

The trial court failed to divide the equity in the Odin Way house in a fair and equitable manner as required by RCW 26.09.080. Jay contributed very substantial separate assets at various times to the property in the form of a down payment and payoff of the prior second mortgage. Yet, in FF 26 the trial court awarded Barbara the entirety of the Odin Way house as her separate property. CP 510.

In FF 12, the court undertook to determine the value of the Odin Way house.⁵ CP 501. Finding of Fact 12 contains manifest internal inconsistencies. The court initially found that \$10,500 Jay paid Barbara to offset the monthly mortgage payments after the separation was an offset owed to Jay. CP 501. The court also reaffirmed that the \$30,000 down payment and \$66,000 payoff of the original second mortgage were from Jay's separate assets. CP 501. This properly mirrors the findings in FF 9 and FF 14 that those funds were Jay's separate property. CP 499, 502. The court then deducted the balance of the mortgage, \$248,000, from the agreed present value of \$415,000 and arrived at a figure of \$152,000. CP 501. This appears to be a simple error of arithmetic. \$415,000 minus

⁵ The parties agreed that the present value of the Odin Way house at the time of trial was \$415,000. RP 437; CP 1254.

\$248,000 is \$167,000, not \$152,000. Deducting the \$10,500 offset as well as the mortgage yields \$156,500, not \$152,000. Deducting the combined \$30,000 down payment and \$66,000 pay off (\$96,000) along with the mortgage of \$248,000 leaves only \$71,000. Deducting the \$96,000 alone leaves \$319,000.

The court cites additional improvements Jay made to the Odin Way house in the amount of \$23,500. *Id.* Deducting that amount along with the mortgage of \$248,000 yields \$143,500. The offset reduces that amount to \$133,000. Thus, no combination of figures the trial court provided in FF 12 yields the value of the Odin Way house as \$152,000.

But that arithmetic error is only the beginning of the problems with FF 12, because the court then found that, “After reimbursement to the Respondent [Jay] for his separate contributions of \$151,500, the community equity to be divided is \$10,500.” *Id.* The court does not explain what separate contributions the \$151,500 figure represents. The numbers analyzed in the previous paragraphs yield no such figure. Adding the down payment (\$30,000), the pay off (\$66,000), the offset of \$10,500, and the improvements to the home (\$23,500), gives us a figure of \$130,000, not \$151,000.

More baffling than the errant sum of \$151,500 is the reference to the “reimbursement to the Respondent.” Neither FF 12, nor any other

finding of fact details such a reimbursement, beyond the \$10,500 offset for maintaining the house discussed above.⁶ Instead, FF 26 awards the home to Barbara “free of any right, title or claim of the Respondent...” CP 510. The amended decree likewise makes no reference to any reimbursement to Jay. Paragraph 1.3 of the Decree, titled Money Judgment Summary, lists Barbara as judgment debtor in the amount of \$13,650 for the liabilities specified in paragraph 3.7. CP 617. Those liabilities are the \$11,000 mortgage payment reimbursement and \$2,650 for missing jewelry. CP 621. Nowhere in the findings of fact or the Decree is the reimbursement discussed in FF 12 ever explained or ordered by the trial court.

The court failed to divide the property between the parties in a fair and equitable manner as required by RCW 26.09.080. Jay contributed very substantial separate assets to the property. The trial court erred in failing to order the community to reimburse Jay for the original down-payment of \$30,000 from his separate assets. The down-payment is clearly traceable to his separate estate as the court noted in FF 9. CP 499-500. It also erred in failing to order the community to reimburse Jay for the \$66,000 pay off of the second mortgage, which the court also properly found to be his separate property. FF 14; CP 502. The trial court erred in

⁶ Even that figure is contradicted in paragraph 3.7 of the amended decree where the court states that Barbara is to pay \$11,000 to Jay to reimburse him for payments made toward the Odin Way mortgage. CP 621.

failing to require Barbara to reimburse Jay for the separate property contributions totaling \$96,000. CP 621.

Had the court properly awarded the return of Jay's separate property, he should have been awarded a judgment of \$107,000 (\$30,000 + \$66,000 + 11,000). It should then have ordered the division of the remaining equity in the home. It did not do so. Instead, the court – after discussing the need to reimburse Jay in FF 12 – awarded the Odin Way house to Barbara. It did not ever order the reimbursement mentioned in FF 12, or even order the division of the community share of the property it discussed in FF 12.

The effect of the trial court's award of the Odin Way house to Barbara is an inequitable distribution of property in the dissolution. Even if the court intended to award Barbara 100% of the Odin Way house (which its discussion of Jay's separate property and reimbursement calls into serious doubt), the findings of fact do not support such a disparate property award. The court found that Jay entered the marriage with approximately \$500,000 and that Barbara entered with only \$15,000. CP 512. It also found that the marriage was a short-term marriage and that a *50/50 split in assets* would not be fair or equitable. The court plainly anticipated reimbursing Jay for the use of his separate property in the purchase of the Odin Way house and specified that he should be

reimbursed in FF 12. The court did not award Barbara maintenance and did not award attorney fees or costs, finding that each of the parties had sufficient resources to pay their own fees and costs. CP 495-96. Throughout the marriage, Barbara had an ample income of her own; in all but the first year it was well into six figures. CP 505-06. In three of those years, she earned more than Jay did. *Id.* The Decree awards each party his or her own employment-related benefits. CP 619.

Far from returning the parties of this short-term marriage to their premarital relative financial conditions, the court has allowed Barbara to profit enormously at Jay's expense. Jay and Barbara are of similar age and income. Barbara came into her third marriage with only \$15,000 in assets compared to Jay's separate assets of \$500,000. Yet she is walking away from the marriage with the \$167,000 of equity in the Odin Way house. Jay is left with a time share and equity in the Rental Property (purchased with his separate property) that is held by the 401K and is consequently subject to a 33% tax rate in the event of sale.

This is a windfall for Barbara, is devastating to Jay, and is not supported by the facts or the law. The trial court's findings of fact and the Decree do nothing to shed light on how this inequity came about. Where they should provide clarity and guide the parties in the equitable distribution of the marital assets, they provide an inequitable distribution,

and are ambiguous, opaque, and self-contradictory. No judgment is enforceable under the terms of the findings and decree as written. It is, in short, based on untenable grounds.

This Court should reverse the award of the Odin Way house and remand for an equitable distribution of the Odin Way house which acknowledges the value of Jay's significant contributions of his separate property.

(4) The Trial Court Erred In Not Ordering an Offset of Federal Income Taxes

In FF 22, the trial court found Barbara withdrew from the business savings account the funds Jay had set aside for quarterly tax payments. CP 507. It further found that, not only did Barbara not make a single 2009 quarterly tax payment, she did not tell Jay that she did not make the payments. *Id.* Barbara made one tax payment in 2008. *Id.* In April 2009, filed for a tax filing extension, representing to the accountant, the IRS, and to Jay that the quarterly taxes had been paid. *Id.* She signed the 2008 income tax return, falsely stating that the quarterly taxes had been paid. CP 508. The community tax obligation was approximately \$40,000 for 2008 and \$25,000 for 2009. *Id.* In FF 22, the court found that the tax debt should be divided equally, due to what it described as Barbara's "self-direction of the community's assets." *Id.* In FF 22, the court did not

address how to reimburse Jay for Barbara's "self-directed" appropriation of the \$25,000 of funds to be applied to the 2009 taxes.

Paragraph 3.17.7 of the Decree refers to an offset and promissory note that is never spelled out in the decree. In paragraph 3.17.7, the court ruled that the parties are to file separately for 2009 and that each party is to pay 50% of the outstanding tax liability for 2008 and 2009. CP 623. It then states in parentheses, "See paragraph 3.6 which provides that the Petitioner's [Barbara's] 50% liability for 2009 taxes has been offset against the promissory note to Respondent [Jay]." *Id.* Paragraph 3.6 makes absolutely no mention of any offset or any promissory note. CP 619.

Paragraph 3.6, detailing Jay's liabilities, mentions taxes only to the extent that it requires Jay to pay one half of the remaining 2008 tax debt. *Id.* Paragraph 3.7, detailing Barbara's liabilities, does not mention taxes at all. CP 621. Other than requiring Barbara to reimburse Jay \$11,000 for the Odin Way house mortgage payments and \$2,650 for missing jewelry, the remainder of the paragraph obligates Barbara only to paying off seven credit cards, one-half of an accountant's bills, and one-half of an attorney's bills. *Id.*

By the court's own finding in FF 22, Barbara withdrew the funds intended to pay the taxes. The court clearly intended to compensate Jay

for those missing funds via an offset against a promissory note. But the court then failed to enter the promissory note anywhere in the Decree, or to define the nature and extent of the promissory note. The decree, insofar as it relates to Federal taxes, is thus unenforceable on its own terms.

This Court should remand for clarification of the terms of the tax payments for 2009 and entry of the promissory note mentioned in the decree.

F. ATTORNEY FEES

RCW 26.09.140 provides for an award of reasonable attorney fees for maintaining or defending any proceeding under RCW Chapter 26.09. *In re Marriage of Bocanegra*, 58 Wn. App. 271, 282, 792 P.2d 1263 (1990), *review denied*, 116 Wn.2d 1008 (1991). Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs. In making the award, the Court must consider the financial resources of both spouses, the need of the party requesting fees and the ability of the other party to pay. *In re Marriage of Moody*, 137 Wn.2d 979, 994, 976 P.2d 1240 (1999); *In re Marriage of Shellenberger*, 80 Wn. App. 71, 87, 906 P.2d 968 (1995).

Jay is entitled to his reasonable attorney fees and costs on appeal. RAP 18.1(b); RCW 26.09.140. RAP 18.1(c) requires that where fees are

based on need, the party requesting fees must file an affidavit of financial need no later than 10 days before oral argument. Jay will file his financial affidavit within the time limits established in RAP 18.1(c). A careful assessment of his financial need, balanced against Barbara's ability to pay, firmly supports the conclusion that he should recover his fees and costs on appeal. RCW 26.09.140. Pursuant to RAP 18.1, Jay requests the Court award him fees on appeal.

G. CONCLUSION

While the trial court gave an accurate account of the history of Jay and Barbara's relationship, its findings of fact regarding the Odin Way house contain manifest inconsistencies. It erroneously awarded the entirety of the Odin Way house to Barbara and failed to award Jay the reimbursement it discussed when determining the value of the house. Similarly, by its own terms, the trial court evidently intended that Barbara execute a promissory note to Jay in connection with the 2009 taxes, but failed to detail the promissory note in its findings or in the decree. This Court should reverse the award of the Odin Way house and remand for an equitable distribution of the Odin Way house which acknowledges the value of Jay's significant contributions of his separate property. It should also remand for clarification of the terms of the tax payments for 2009 and

entry of the promissory note mentioned in the decree. Jay should be awarded attorney fees on appeal.

DATED this 29th day of April, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Lohnes", written over a horizontal line.

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APPENDIX

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The Petitioner is a resident of the State of Washington.

2.2 NOTICE TO THE RESPONDENT.

The Respondent was served by personal service of a Summons and Petition for Dissolution of Marriage.

2.3 BASIS OF JURISDICTION OVER THE RESPONDENT.

The facts below establish personal jurisdiction over the Respondent.

- The Respondent currently resides in Washington.
- The parties lived in Washington during their marriage, and both parties continue to reside in this state.

2.4 DATE AND PLACE OF MARRIAGE.

The parties were married on July 13, 2003 at Kirkland, King County, WA.

2.5 STATUS OF THE PARTIES:

The Respondent and Petitioner separated on August 31, 2009.

2.6 STATUS OF THE MARRIAGE.

The marriage is irretrievably broken and at least 90 days have elapsed since the date the Petition was filed and since the date the Summons was served upon the Respondent.

2.7 PROPERTY SETTLEMENT AGREEMENT/PRENUPTIAL AGREEMENT.

- There is no written Property Settlement Agreement.
- There is no written Prenuptial Agreement.

2.8 COMMUNITY PROPERTY.

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The parties have real or personal community property that has been equitably divided as set forth in the parties' Decree. Said Decree is incorporated by reference into these Findings of Fact as if set forth fully herein.

2.9 SEPARATE PROPERTY.

The parties have real or personal separate property which has been awarded to them as set forth in the parties' Decree. Said Decree is incorporated by reference into these Findings of Fact as if set forth fully herein.

2.10 COMMUNITY LIABILITIES.

The parties have incurred community liabilities which have been allocated to them as set forth in the parties' Decree. Said Decree is incorporated by reference into these Findings of Fact as if set forth fully herein.

2.11 SEPARATE LIABILITIES.

The parties have incurred separate liabilities that have been allocated to them as set forth in the parties' Decree. Said Decree is incorporated by reference into these Findings of Fact as if set forth fully herein.

2.12 MAINTENANCE.

Maintenance is not ordered. The Petitioner waived her request for maintenance - See Order Granting Partial Summary Judgment entered July 30, 2010. Respondent shall be awarded an offset of maintenance he paid while this matter was pending trial. Respondent paid the Petitioner maintenance of \$1,000 per month to offset the monthly mortgage amount of \$2,400. The \$10,500 paid to Petitioner for maintenance is an offset owed to Respondent who wrongfully paid because Petitioner waived maintenance.

2.13 CONTINUING RESTRAINING ORDER.

Does not apply.

2.14 PROTECTION ORDER.

Does not apply.

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2.15 FEES AND COSTS.

There is no additional award of fees or costs because each of the parties has sufficient property, income or resources available to pay his or her own attorney fees and costs.

There is no finding of intransigence.

2.16 PREGNANCY.

The Petitioner/Petitioner is not pregnant.

2.17 DEPENDENT CHILDREN.

The parties have no dependent children of this marriage.

2.18 JURISDICTION OVER THE CHILDREN.

Does not apply because there are no dependent children.

2.19 PARENTING PLAN.

Does not apply.

2.20 CHILD SUPPORT.

Does not apply.

2.21 OTHER.

The court finds the following facts after trial:

1. The Petitioner is presently 61 years old and the Respondent is presently 62 years old.

There was no prenuptial agreement. Throughout the marriage the Petitioner has worked as a

1 director of property management and the Respondent as a construction consultant. This is
2 the Respondent's second marriage and the Petitioner's third marriage.

3 2. The parties had a short-term marriage, six years, from July 13, 2003 to the date of
4 separation, August 31, 2009.

5
6 3. On September 1, 2009 the Petitioner obtained an ex parte restraining order requiring
7 the Respondent to remain away from the residence. See Exhibit 83.

8 4. Prior to the marriage, the Petitioner had the following separately-owned property:

9 a. 401K in the approximate value of \$15,000;

10 b. Household furnishings and personal effects and jewelry;

11 c. 1999 Toyota Camry, with loan, which was traded in for 2006 Lexus and with
12 a current loan balance of approximately \$3,000; and

13 d. Employment with Martin Smith Company as a property manager earning an
14 approximately a gross base annual income of \$80,000.

15
16 5. At the time of the marriage, the Petitioner had the following separate debts:

17 a. Loan on 1999 Toyota Camry approximately \$10,000;

18 b. Student Loan for son – approximately \$5,000;

19 c. Credit Card debt totaling approximately \$6,000.

20
21 6. Prior to the marriage, the Respondent had the following separately-owned property

22 a. Net proceeds from the sale of his previous marital residence, approximately
23 \$20,000;

- 1 b. 401K with PCL in the approximate amount of \$30,000;
- 2 c. 1993 Chevrolet Suburban, which was sold during the marriage for
- 3 approximately \$4,500;
- 4 d. 2003 Toyota Camry, which was sold during the marriage for approximately
- 5 \$11,000;
- 6 e. Stock purchase rights and stock ownership with PCL, \$85,000 (net \$40,000
- 7 after loans were paid);
- 8 f. Employment as Senior Project Manager with PCL, approximately gross
- 9 annual income of \$115,000. Respondent's employment was wrongfully terminated in early
- 10 August, 2003, approximately two weeks after the marriage. PCL settlement proceeds were
- 11 \$565,000 less attorney fees/costs of \$270,000, of which approximately \$60,000 was paid by
- 12 the marital community, and reimbursed from the proceeds; and
- 13 g. Respondent's personal property, included jewelry (1971 U of Florida
- 14 graduation ring – Fair Market Value \$500; 1965 Midland Senior High graduation ring – Fair
- 15 Market Value \$250; sterling and gold Franklin mint belt buckle – Fair Market Value \$800;
- 16 vial of 1 carat of loose diamonds – Fair Market Value \$600; woman's antique silver and
- 17 lapis ring – Fair Market Value \$500); tools (Fair Market Value \$10,000); bonsai plants, pots
- 18 and accessories – Fair Market Value \$800; household items, china and crystal
- 19 (approximately 30 Curraghmore Waterford crystal glassware – Fair Market Value \$3,000;
- 20 Waterford crystal decanter and goblets – Fair Market Value \$750); books (including First
- 21
- 22
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1 Edition, Art of Falconry – Fair Market Value \$800); stamp collections – Fair Market Value
2 \$10,000; collector coins – estimated total value: \$4,000; family photographs, personal
3 memorabilia and effects and records. The Petitioner conceded at trial that the
4 aforementioned (g) personal property belongs to the Respondent and will be returned to
5 Respondent.
6

7 7. At the time of the marriage, the Respondent had the following separate debts:

- 8 a. Loan on Toyota Camry – approximately \$15,000;
9 b. PCL 401K loan in approximate \$20,000.

10 8. **Songwood Condo.** Respondent moved into Petitioner's rented two bedroom
11 condominium. Both parties, as single individuals, purchased the condo from the landlord on
12 or about September 25, 2002 for \$207,500 with a down-payment of \$10,000 borrowed by
13 Respondent against his 401K. The condo was subsequently refinanced with no cash
14 removed from the transaction. The parties performed upgrades and deferred maintenance on
15 this condo property, including a new kitchen floor (\$800), a new dishwasher; an exterior
16 drainage system and a new hot water heater. On or about May 31, 2006 the parties sold the
17 condominium for approximately \$270,000, which resulted in net proceeds of approximately
18 \$70,000. The net proceeds of \$70,000 were dissipated by the community.
19

20 9. **Odin Way Home, Bothell, WA.** The parties purchased this residence in May, 2003
21 for \$338,000, before their marriage on July 13, 2003. The down-payment was paid entirely
22 by the Respondent, in the amount of \$30,000, which was from a partial liquidation of his
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1 separately-owned PCL stock. The home was originally purchased in the Petitioner's name
2 only, although Respondent offered to sign on the note, which Petitioner rejected. The
3 Petitioner then signed a Quit Claim Deed on the property to Respondent/Husband. In order
4 to close on the home, there was a first mortgage of approximately \$150,000 and a second
5 mortgage of approximately \$66,000.
6

7 10. **Odin Way Improvements.** Within a few weeks of closing, Respondent paid
8 approximately \$32,000 for the following improvements to the residence with his vacation
9 pay (about \$12,000) and proceeds from the sale of his PCL stock (\$40,000). The
10 Respondent also performed many hours of home maintenance and other minor
11 improvements of the residence. The court finds that Respondent's \$32,000 plus labor cost
12 was a gift to the community.
13

| | | |
|----|-----------------------------------|----------|
| 14 | New Carpet: | \$5,000 |
| 15 | New Furnace and air conditioning: | \$8,500 |
| 16 | Granite countertops: | \$8,000 |
| 17 | New kitchen appliances: | \$5,500 |
| 18 | Landscaping: | \$5,000. |

20 11. **Odin Way Refinance.** The parties refinanced the home in January, 2009 to obtain
21 a 2-point reduction on their interest rate. Respondent offered again to co-sign on the loan,
22 but the Petitioner again rejected his offer. The new loan amount was \$248,000.
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1 12. **Odin Way Value.** The Petitioner has had the exclusive use and enjoyment of the Odin
2 Way home pursuant to Court Order since separation, on or about September 1, 2010.
3 Pursuant to the Temporary Order entered October 12, 2009, Respondent paid the Petitioner
4 maintenance of \$1,000 per month to offset the monthly mortgage amount of \$2,400 on the
5 Odin Way home. The \$10,500 paid to Petitioner for maintenance is an offset owed to
6 Respondent who wrongfully paid because Petitioner ultimately waived her request for
7 maintenance. Petitioner was also ordered to pay all utilities, homeowners dues, and perform
8 all routine yard and home maintenance during the pendency of this litigation.
9

10 The present outstanding balance on the mortgage with First Tennessee Bank remains at
11 \$248,000. The re-finance paperwork has never been provided to the court. The agreed present
12 fair market value of this home is \$415,000. Accordingly the present equity, not including the
13 \$30,000 down-payment from the Respondent and his payoff of the \$66,000 initial second
14 mortgage all paid from the Respondent's separate assets, and not including closing costs, is
15 approximately \$152,000. The court also recognizes Respondent's additional improvements he
16 made to the community home. These additional improvements to the Odin Way home include
17 \$5,000 for landscaping and sidewalk replacement improvements, \$10,000 for a new cedar
18 deck and \$8,500 for the cabinet re-facing. After reimbursement to the Respondent for his
19 separate contributions of \$151,500, the community equity to be divided is \$10,500.
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22 13. **PCL Lawsuit.** Approximately two weeks after the parties' wedding, the
23 Respondent was wrongfully terminated from his employment of 15 years with PCL. On or
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25

1 about August, 2003, he filed suit for wrongful termination and discrimination. The lawsuit
2 was resolved by settlement in August, 2007 for a gross payment to the Respondent of
3 \$565,000. The proceeds from the PCL lawsuit are considered separate property less \$60,000
4 from the Petitioner to fund the litigation. The community was reimbursed from the net
5 proceeds of the settlement (after payment of \$270,000 in legal fees) of \$295,000. This
6 \$60,000 was Petitioner's gift to the community.
7

8 **14. Proceeds from PCL Lawsuit.** Respondent deposited the entire proceeds from the
9 settlement into a joint checking account. The settlement with his previous employer (PCL)
10 was for earnings that had accrued prior to Petitioner and Respondent's marriage. Therefore
11 the settlement is characterized as his separate property. Within a few weeks of settlement,
12 checks were written against those settlement funds for:
13

- 14 \$26,000 to pay off of the Respondent's Suburban truck;
- 15 \$30,000 paid into Respondent's 401K Account;
- 16 \$56,000 purchase of a Hawaiian time share condominium;
- 17 \$66,000 to pay off of the second mortgage on the Odin Way community
18 residence;
- 19 \$58,000 to pay income taxes for 2007 from the settlement amount (April of 2008);
- 20 \$9,000 for landscaping and sidewalk replacement improvements at the
21 community residence (PCL) - characterized as a gift to the community;
- 22 \$10,000 for a new cedar deck (PCL) - characterized as a gift to the community;
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1 \$8,500 for re-facing kitchen cabinets – characterized as a gift to the community.
2 \$263,500.

3 **15. Establishment of Vanguard Consulting, LLC.** After wrongful termination of
4 husband's employment with PCL, Respondent went into business on his own in March, 2004,
5 and continues to work in this business currently. There is no value to speak of in the business
6 The Respondent is awarded the business and its assets (office equipment worth approximately
7 \$1,500). The Petitioner shall resign her position immediately as a member of the LLC.

8 **16. Vanguard Consulting 401K.** Around April, 2007, a 401K was established for the
9 Respondent's business. In the spring of 2006 the Petitioner suggested, after attending a
10 seminar, that the 401K be a self-directed plan, which could invest in other assets, including
11 real estate. The initial deposit of approximately \$50,000 was a rollover from the
12 Respondent's 401K (original source was predominantly from the PCL rollover and a deposit
13 from the proceeds of the sale of the home from his first marriage). An, additional \$30,000
14 deposit was made from the Respondent's PCL settlement. (Approximately \$20,000 of the
15 Respondent's earnings during the marriage was also deposited into this account). In June,
16 2009, when the balance in the Vanguard 401K was approximately \$105,000 (this included a
17 \$15,000 gold investment of 20 one ounce gold Krugerrands), and a rental home in Bothell
18 was purchased by the 401K.
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XEROX

1 **17. 401K Purchase of Rental Home 16207 – 40th Avenue SE, Bothell, WA 98012.**

2 Based on a previous rental history with Petitioner's son, Petitioner wanted the community to
3 provide a residence for her adult son and his family. The Respondent agreed. The parties
4 located such a residence, and purchased it in June, 2009 for \$405,000. The down-payment of
5 \$80,000 came from the community's Vanguard Consulting 401K. In addition, the community
6 paid \$10,000 in closing costs. The balance of \$325,000 was paid through a mortgage with
7 Gulf Savings and Loan, guaranteed solely by the Respondent. This property is the
8 Respondent's sole and separate estate, and the Petitioner executed a Quit Claim to accomplish
9 this. Monthly loan payments are \$2,200. The parties had a verbal month-to-month tenancy
10 with Paul Nystrom (Petitioner's adult son from a previous marriage) for \$1,700 per month
11 rent. The monthly shortfall of \$500 has been paid from the Respondent's earnings prior to
12 separation and up until the present.
13

14
15 **18. Lease of Rental Home.** On October 12, 2009 the court issued temporary orders which
16 included a prohibition against the Respondent from interfering with the Petitioner's son's
17 occupancy of the rental home, and required the Respondent to continue paying the \$500 per
18 month shortfall. On or about October 30, 2009, the Respondent asked the Petitioner's son to
19 sign a written lease for one year at \$1,850. The Petitioner's son, Paul Nystrom, did not
20 respond to the offered lease or follow-up correspondence through mid-November, 2009. Then
21 on or about November 13, 2009, the Petitioner's son wrote to the Respondent advising him of
22 the purported lease. The said lease was purportedly executed in August, 2009, and was signed
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1 only by the Petitioner and Petitioner's son. This lease was initially for a three year period at
 2 \$1,700 per month. Said lease provided options for continued occupancy of the rental home to
 3 the Petitioner's son for an additional 12 years, with the rental increase to be capped at 3%
 4 every three years. The Respondent did not have any knowledge about this purported lease
 5 before it was disclosed by the Petitioner's son on or about November 13, 2009. See Exhibit
 6 73. Both prior to and after separation the Petitioner and her son had no legal standing or
 7 authority to execute a lease for property that remains in Respondent's sole name. Petitioner's
 8 son has 45 days from the date of this court order to vacate the premises. The lease entered
 9 between Petitioner and her son is null and void and is not legally valid or enforceable.
 10

11
 12 **19. Present Fair Market Value of Rental Home.**

13 The Petitioner's expert, Penny Crowe, SRA submitted an appraisal of the Bothell rental home
 14 dated July 12, 2010. The fair market value is approximately of \$440,000.

15 **20. Incomes of Parties During Marriage.** During the marriage, the parties' earnings were
 16 as follows:

17

| 18 <u>Year</u> | <u>Respondent's Earnings</u> | <u>Respondent's PCL</u> | <u>Petitioner's Earnings</u> |
|----------------|------------------------------|-------------------------|------------------------------|
| 19 2003 | \$69,565 (See | | |
| 20 | Exhibit 1) | | |

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| 23 <u>Year</u> | <u>Respondent's Earnings</u> | <u>Respondent's PCL</u> | <u>Petitioner's Earnings</u> |
|----------------|------------------------------|-------------------------|------------------------------|
| 24 2004 | \$57,211 (See | | \$87,360 (See |

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| | | | | |
|----|------|---------------------|----------|---------------------|
| 1 | | Exhibits 1 and 121) | | Exhibits 1 and 121) |
| 2 | 2005 | \$72,893 (See | | \$103,576 (See |
| 3 | | Exhibits 1 and 122) | | Exhibits 1 and 122) |
| 4 | | | | |
| 5 | 2006 | \$70,597 (See | | \$101,649 (See |
| 6 | | Exhibits 1 and 123) | | Exhibits 1 and 123) |
| 7 | 2007 | \$190,413 (See | \$18,923 | \$140,862 (See |
| 8 | | 124) | | Exhibit 124) |
| 9 | 2008 | \$177,782 (See | | \$132,825 (See |
| 10 | | Exhibit 125) | | Exhibit 125) |
| 11 | | | | |
| 12 | 2009 | \$201,000 | | \$135,480 (See |
| 13 | | | | Exhibit 63) |
| 14 | 2010 | \$121,000 | | ? |

15 21. **Routine Quarterly Income Tax Payments.** Petitioner has a degree in
16 finance/accounting. Throughout the marriage, she handled all of the financial affairs for the
17 parties (except for Respondent's Visa bill), including but not limited to the payment of all
18 monthly household bills. All the accounts (Vangurard business and community) were
19 maintained by the Petitioner as well as joint income tax preparation and business tax
20 preparation for the accountants. Petitioner specifically handled the bookkeeping for the
21 Husband's business Vanguard Consulting, LLC, which included quarterly tax payments, tax
22 preparation with the accountant and maintaining expenses and receipts. The business had
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1 two other bank accounts, in addition to the 401K account with Chase. The two other
2 accounts were a business checking account and a business savings account. The Respondent
3 would routinely deposit his checks from Hainline & Associates into the corporate checking
4 account. The Petitioner would subsequently transfer funds into the business savings account
5 to hold for quarterly taxes and the parties' personal checking account for community use. At
6 the time the quarterly tax payments were due (3/15, 6/15, 9/15 and 12/15), Petitioner would
7 coordinate with the accountant to determine the appropriate amount of the payments.
8
9 Petitioner then would transfer the necessary funds from the business savings account into
10 the business checking account, and write the checks for the IRS. All of the checks for the
11 quarterly tax payments throughout the marriage for Vanguard earnings were prepared and
12 signed by the Petitioner. The Petitioner was in the unique position of distributing funds that
13 Respondent deposited into the Vanguard account. Petitioner essentially controlled the
14 money, which resulted in a self-directed commingling of funds.
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16

17 **22. 2009 Income Tax Return and Quarterly Payments.** From January 2008 until the
18 end of August, 2009, the Petitioner withdrew from the business savings account the funds
19 set aside for every quarterly tax payment. However, in 2009 Petitioner failed to make the
20 actual quarterly tax payment. The Petitioner did not tell the Respondent that she was not
21 making the quarterly income tax payments. Petitioner made one tax payment for 2008, and
22 in April 2009, she requested an automatic tax filing extension, representing to the
23 accountant, the IRS and the Respondent that the quarterly tax payments had been made.
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1 The Petitioner signed the 2008 income tax return which indicated that the quarterly tax
2 payments had been made, but in fact, they had not. See Exhibits 127, 128, 129. As a result
3 of Petitioner's failure to pay quarterly tax payments, there is a present outstanding
4 community tax obligation of approximately \$40,000 for 2008 and \$25,000 for 2009. These
5 IRS debts are divided equally between the Petitioner and the Respondent; largely due to
6 Petitioner's self-direction of the community's assets. The sale of the remaining gold held in
7 trust at the Bugni Law Firm is to be used to pay down this debt in part. The remaining tax
8 debt will be shared equally as a community debt.

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11 **23. Petitioner's Spending.** Throughout the marriage, the Petitioner spent significantly
12 more than her personal earnings on herself and on behalf of her adult son. Petitioner failed
13 to disclose to the Respondent the nature and extent of debt and credit she used after the
14 marriage. For example, as Washington Mutual Bank folded the Petitioner moved the
15 community and business funds to Wells Fargo and did not inform the Respondent until after
16 the fact. Respondent had no individual checking accounts once Petitioner took over the
17 management of all financial affairs.

18
19 Petitioner shall pay the credit card bills as her separate property, except for the
20 Nordstrom bill capped at \$11,000. Due to the Petitioner's self-direction and comingling of
21 the community's funds, Petitioner is responsible for all remaining credit cards, excluding the
22 Nordstrom bill. See Exhibit 205. Petitioner shall pay as her separate property the following
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1 credit cards: Key Bank, Victoria's Secret, Capital One, Macy's, Bank of America and Chase
2 Bank. See Exhibit 205.

3
4 **24. Petitioner in Possession of Home and Financial Records.** The Petitioner has
5 maintained sole and exclusive possession of the Odin Way home since on or about
6 September 1, 2009. Respondent looked for his records due to his eviction from the home on
7 September 1, 2009 pursuant to the Petitioner's restraining order; the records have been
8 missing since then. The Petitioner denies that she has the missing records.

9
10 **25. Safe Deposit Box.** The parties had a joint safe deposit box at the Totem Lake Chase
11 Bank during their marriage. Bank records confirm that the Petitioner entered this box on
12 August 4, 2009 and on August 27, 2009. The Temporary Order issued by the court
13 prohibited access to the box by either party (entered on October 12, 2009). When the
14 parties and their counsel inventoried the contents of the safe deposit box on March 31, 2010,
15 all of the Petitioner's jewelry, her personal records and the husband's class rings, antique
16 lapis ring, belt buckle, loose diamonds and important personal papers were missing. The last
17 time the Respondent had entered the box was before August 1, 2009. The record supports
18 two entries into the safe deposit box by Petitioner during Respondent's absence. She is
19 thereby held responsible for the fair market value of the vial of diamonds at their fair market
20 value of \$600; Sterling and gold Franklin Mint belt buckle with a fair market value of \$800,;
21 1971 University of Florida graduation ring with a fair market value of \$500; 1965 Midland
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1 white gold high school class ring with a fair market value of \$250; Woman's antique
2 silver/lapis ring with a fair market value \$500. See Exhibits 10, 132, 133, and 134.

3 **26. Separate Property Awarded to Petitioner**

4 The Petitioner is awarded as her separate property, free and clear of any right, title or claim
5 of the Respondent, the following property, and Respondent shall hereby quit claim and
6 convey all of said property to the Petitioner.
7

- 8
- 9 1. All furniture, furnishings, clothing, personal items and personal property of any
10 description presently in her possession at the community's residence, except for
the following items specifically awarded to the Respondent (see Attachment A).
 - 11 2. All bank accounts, savings accounts and credit union accounts in her name only.
 - 12
 - 13 3. All life insurance policies insuring her life, for which the Respondent is hereby
14 divested of any interest as beneficiary.
 - 15 4. The following automobile: 2006 Lexus. The Petitioner shall become solely
16 obligated for all payments due or which may become due for the use, operation,
17 maintenance and financing thereof, and shall hold the Respondent harmless
thereon.
 - 18
 - 19 5. Any property acquired by the Petitioner prior to marriage on July 13, 2003 or
20 subsequent to the date of the parties' separation of August 31, 2009 not otherwise
allocated to the Respondent herein.
 - 21
 - 22 6. Any and all retirement plans or 401K plans, or IRAs in Petitioner's name.
 - 23
 - 24 7. The home at 9419 Odin Way, Bothell, King County, WA.
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27. Separate Property Awarded to Respondent

The Respondent is awarded as his separate property, free and clear of any right, title or claim of the Petitioner, the following property, and the Petitioner shall hereby quit claim and convey all of said property to the Respondent.

1. All furniture, furnishings, clothing, personal items and personal property of any description presently in his possession.
2. The following property currently in the Petitioner's possession: (see Attachment A).
3. All bank accounts, savings accounts and credit union accounts in Respondent's name only, or that of his business, Vanguard Consulting, LLC.
4. All life insurance policies insuring Respondent's life, for which the Petitioner is hereby divested of any interest as beneficiary.
5. The following automobiles: 2007 Hyundai and 2009 Mercedes. The Respondent shall become solely obligated for all payments due or which may become due for the use, operation, maintenance and financing thereof, and shall hold the Petitioner harmless thereon.
6. Any property acquired by the Respondent prior to marriage on July 13, 2003 or subsequent to the date of the parties' separation of August 31, 2009.
7. The Respondent's 401K retirement account.
8. The home commonly known as 16207 – 40th Avenue SE, Bothell, Snohomish County, WA 98012-5047.
9. All right, title and interest in and to the business known as Vanguard Consulting, LLC and all assets thereto, including but not limited to bank accounts, accounts

1 receivables, work in progress, tools and equipment. Petitioner shall immediately
2 execute any and all documents necessary to relinquish her membership in this
3 LLC.

4 10. Time share property commonly known as: one floating week, interest no. 2227/29-
5 40 AP of Ocean Resort Villas, 6 Kaiala Drive, 2227/29-40AP, Lahaina, HI 96761.

6 **28. Distribution of the Separate Property Awarded to Respondent**

7 The court recognizes that Petitioner has been given a large amount of household furnishings,
8 which is estimated at a fair market value exceeding \$15,000. Additionally, the court also
9 recognizes that the Respondent entered this marriage with approximately \$500,000 (this
10 includes the PCL settlement), whereas the Petitioner entered this marriage with
11 approximately \$15,000. This was a short-term marriage lasting six years and a 50/50 split in
12 assets would not be a fair or reasonable.

13 There will be no subsequent walk through by the Respondent at the 9419 Odin Way,
14 Bothell, WA house. All subsequent property left at the 9419 Odin Way home belonging to
15 the Respondent (see attached Exhibit A) is to be picked up between the hours of 9:00 a.m.
16 and 3:00 p.m. by a representative of the Respondent on Saturday, September 25, 2010. The
17 Petitioner is also to have a representative at the Odin Way home on Saturday, September 25,
18 2010 from 9:00 a.m. to 3:00 p.m. Neither Petitioner nor the Respondent is to be present at
19 the 9419 Odin Way home on September 25, 2010 between the hours of 9:00 a.m. to 3:00
20 p.m. This exchange of property is to take place on Saturday, September 25, 2010 at the Odin
21 Way home with representatives of the Petitioner and the Respondent. The Petitioner is to
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1 arrange for the identified separate property of the Respondent (see attached Exhibit A) to be
2 readily accessible in one place within the Odin Way home, presumably the garage.
3

4 III. CONCLUSIONS OF LAW

5 The Court makes the following Conclusions of Law from the foregoing Findings of Fact:

6 3.1 JURISDICTION.

7 The Court has jurisdiction to enter a Decree in this matter.
8

9 3.2 GRANTING OF A DECREE.

10 The parties should be granted a Decree.

11 3.3 PREGNANCY.

12 Does not apply.
13

14 3.4 DISPOSITION.

15 The court issues a Decree of Dissolution on August 5, 2010.

16 3.5 CONTINUING RESTRAINING ORDER.

17 Does not apply. All previous restraining orders are vacated.
18

19 3.6 PROTECTION ORDER.

20 Does not apply.

21 3.7 ATTORNEY'S FEES AND COSTS.

22 There is no additional award of fees or costs because each of the parties has
23 sufficient property, income or resources available to pay his or her own attorney fees
24 and costs.
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There is no finding of intransigence.

3.8 2009 Tax Return

2009 tax return may be filed separately because of the contentions nature that remains between the parties, even though it will cost the parties greater amounts of money.

3.9 OTHER.

The purported August, 2009 lease for the rental home owned by the Respondent's 401K between the Petitioner and her son providing options for occupancy for up to 15 years is void. Any and all liability for alleged breach of said purported lease by her son and his family, including but not limited to attorney fees, shall be the Petitioner's sole and separate responsibility.

Dated: 2nd September 2010



JUDGE JULIE SPECTOR

Exhibit A

All Router bits to all tools
Silver stapler with staples
Misc. specialty wrenches for routers
Mat cutting tool
Exacto knife set
Socket ratchet handles-loose (2)
10 Loose sockets
Socket/ratchet sets metric and English
Coping saw w/spare blades
Small yellow chafing saw
Japanese cut off saw
"Leatherman" style multi-tool
Running grain handsaw
Driver bits
Curved neck pry bar
Hack saw with spare blades
Small open ended handle for hack saw blades
Metal flat mill files (3)
Wood half round files (2)
Set of micro files in plastic case
Picture frame clamps
Electronic calipers
Venier calipers
Vice grip pliers set
Micro scale with tare weights
Forstner drill bit set in wooden case
High carbon protractor combination square
High carbon combination square
Tri-square
2 Utility Squares (1 hardwood, 1 plastic handle)
Wood case/plastic cover router bit collection
Wood case/plastic cover router bit collection
Power Tools/Accessories
Blue Yamaha portable generator (for tools)
Red Porter Cable portable pancake compressor
1.5 HP Sears router with router table
Dremel tool with bits in grey plastic case
Grizzly pneumatic brad nailer w/brads
Grizzly pneumatic staple nailer w/staples
Porter Cable pneumatic nailer w/nails
Biscuit joiner with biscuits
Electric portable drill/disk sander
Hand vibratory palm sander (4" square pad)

Tape measures (6)
Lineman's pliers (2)
Diagonal pliers (2)
Adjustable end pliers 4", 6", 8", 10", 12"
Channel lock pliers (4)
Needle nose pliers (2)
Forstner bit set in wooden case
Standard screw drivers (15)
Phillips screw drivers (15)
Micro drill bits w/brass handle (2)
Magnetic tipped telescoping mirror
Claw hammers (4)
Ball peen hammer
Copper tubing cutter (2)
Router wrenches (2)
Electrical wire stripping pliers (2)
Utility knives with spare blades (4)
Allen wrench sets (2)
Pneumatic gun and misc fittings
4 foot aluminum straight edge
8 foot aluminum straight edge (2 four' pieces)
Utility square
Hardwood line scribe
Forstner bits (3)
Hole saws with cores
4" scraper and spare blades
Paint scraper and spare blades
Spanner wrenches (3)
Stainless steel 2 piece rolling tool cabinet
Stainless Steel Rule (2)
Shovels
Pick axes
Zip drill/cutter and bits for same
Miniature compressor w/attachments/hoses
Makita 4" side grinder with diamond blade
Car Battery charger
10" Sears table saw w/rolling stand
Dewalt 12" planer w/stand
Floor mounted drill press
Jet 14" band saw and rolling stand w/blades
Grizzly combination disc/belt sander and stand
Dust collection system with stand
Hand vibratory sander (triangular pad) w/pads

Dewalt fastener driver
Belt Sander w/sanding belts
Makita circular saw
Nail sets (4)
4 foot aluminum straight edge
8 foot aluminum straight edge (2 four' pieces)
Yellow crystal decanter and glasses
2 engagement champagne glasses
Stamp collections
Washing machine at rental home
Refrigerator at rental home
Pewter grape wine coaster
Heron metal sculpture
Hand drawn house plans
Framed photo montage
Italian leather brief case and suitcase
Goober the stuffed bear

Electric drill motor with all loose drill bits
Yellow elec. stapler with all staples (2 boxes)
Skill circular saw
Utility square
Hardwood line scribe
Hole saws (numerous loose) with cores
Sterling silver flatware
Picnic hamper and contents
Box of LP record albums
Clothes dryer at rental home
Pewter grape cluster wine stopper
Wordsmith magazine collection
18 round stain glass window
24" stained glass window
Reproduction Regulator wall clock
Paints and artists painting supplies

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**Superior Court of Washington
County of King**

In re the Marriage of:

BARBARA CONGLETON,
and
JAY CONGLETON,
Petitioner,
Respondent.

No. 09-3-05870-2 SEA
**Amended Decree of Dissolution
Nunc Pro Tunc**

I. Judgment/Order Summaries

1.1 Restraining Order Summary:
Does not apply.

1.2 Real Property Judgment Summary:
Real Property Judgment Summary is set forth below for 9419 Odin Way, Bothell, King
County, WA. 98011

Assessor's property tax parcel or account number: 885410-0290-07
See paragraph 3.2 A below for a full legal description.

Real Property Judgment Summary is set forth below for 16207-40th Avenue SE, Bothell,
Snohomish County, WA. 98012-5047
Assessor's property tax parcel or account number: 01011800002600
See paragraph 3.2 B below for a full legal description.

Real Property Judgment Summary is set forth below for time share property commonly
known as: one floating week, interest no. 2227/29-40 of Ocean Resort Villas, 6 Kaiala
Drive, 2227/29-40AP, Lahaina, HI 96761:
Assessor's property tax parcel or account number: Lahaina, Maui County, HI
See paragraph 3.2 C below for a full legal description.

ORIGINAL

1 **1.3 Money Judgment Summary:**

2 Judgment Summary is set forth below.

- 3 A. Judgment creditor Jay Congleton
- 4 B. Judgment debtor Barbara Nystrom
- 5 C. Principal judgment amount \$ 13,650.00
- 6 D. Interest to date of judgment \$ _____
- 7 E. Attorney fees \$ _____
- 8 F. Costs \$ _____
- 9 G. Other recovery amount \$ _____
- 10 H. Principal judgment shall bear interest at _____ % per annum
- 11 I. Attorney fees, costs and other recovery amounts shall bear interest at 12 % per annum
- 12 J. Attorney for judgment creditor Margaret Doyle Fitzpatrick
- 13 K. Attorney for judgment debtor Veronica Freitas
- 14 L. Other:

11 ***End of Summaries***

12 **II. Basis**

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

14 **III. Decree**

15 ***It Is Decreed*** that:

16 **3.1 Status of the Marriage**

17 The marriage of the parties is dissolved. The Petitioner, Barbara Congleton, shall be
18 referred to as the "Wife", and the Respondent, Jay Congleton shall be referred to as the
19 "Husband".

20 **3.2 Real Property**

21 A. The parties have a community interest in real property located at 9419 Odin Way,
22 Bothell, King County, WA 98011 described as follows:

23 Said property is hereby awarded to the Wife as her sole and separate property, free and
24 clear of any interest in the Husband. The Wife shall henceforth assume and pay all taxes,
25 utilities, insurance, mortgage and other obligations on said property and hold the
26 Husband harmless and indemnify him from any liability thereon, (including reasonable
27 attorney's fees). The mortgage on this property is already solely in the Wife's name.
28

1 Upon entry of this Decree, the Husband shall execute a Quit Claim Deed in favor of the
2 Wife conveying all right, title and interest in and to the aforesaid real property to the
3 Wife. Upon the Husband's failure to so convey all right, title and interest in and to said
4 property, this Decree shall be, constitute and operate as such conveyance, and the County
5 Auditor is hereby authorized and directed to transfer and record the same for a public
6 record of such conveyance. The parties shall cooperate in any re-execution of documents
7 which might be needed in order to amend or correct a legal description.

8 B. The parties have a community interest in real property located at 16207 - 40th
9 Avenue SE, Bothell, King County, WA 98012 described as follows:

10 Lot 26, Sunset Meadows Estates, according to the Plat thereof
11 Recorded under Snohomish County Auditor's File Number 200406025249,
12 Records of Snohomish County, WA, Situate in the County of Snohomish, State of
13 Washington.

14 Tax Parcel No. 01011800002600.

15 Said property is hereby awarded to the husband as his sole and separate property, free and
16 clear of any interest in the Wife. The Husband shall henceforth assume and pay all taxes,
17 utilities, insurance, mortgage and other obligations on said property and hold the Wife
18 harmless and indemnify her from any liability thereon, (including reasonable attorney's
19 fees). In the event of a refinance, the Wife's name shall be removed from the mortgage,
20 but even in the event of no refinance, the mortgage is being assumed solely by the
21 Husband, who agrees to the above hold harmless and indemnification of the Wife.

22 Upon entry of this Decree, the Wife shall execute a Quit Claim Deed in favor of the
23 Husband conveying all right, title and interest in and to the aforesaid real property to the
24 Husband. Upon the Wife's failure to so convey all right, title and interest in and to said
25 property, this Decree shall be, constitute and operate as such conveyance, and the County
26 Auditor is hereby authorized and directed to transfer and record the same for a public
27 record of such conveyance. The parties shall cooperate in any re-execution of documents
28 which might be needed in order to amend or correct a legal description.

B. The parties have a community interest in a time share property located in Maui,
Hawaii commonly known as one floating week, interest no. 2227/29-40 of Ocean Resort
Villas, 6 Kaiala Drive, 2227/29-40AP, Lahaina, HI 96761 and described as follows:

Vacation Ownership Interest 2227/29 Every Year, being more particularly described as
follows:

FIRST:

An undivided 1/52 interest in and to the following:

A. Apartment No. 2227/29 of that certain Condominium Property known as the "OCEAN
RESORT VILLAS", as shown on Condominium Map No. 1431, described in the

1 Declaration of Condominium Property Regime dated August 24, 2001, and filed as
2 Land Court Document No. 2734238.

3 Together with appurtenant easements as follows:

4 (a) An exclusive easement to use the Parking Spaces(s) indicated in the Condominium
5 Declaration and as shown on the Condominium Map.

6 (b) Non-exclusive easements in the common elements designed for such Purposes for
7 ingress to egress from , utility services for and support Of said apartment, in the
8 other common elements for use according to their respective purposes.

9 (c) Exclusive easements to use other limited common elements Appurtenant thereto
10 designated for its exclusive use by the Declaration.

11 B. An undivided 0.004661000 percentage common interest in all Common elements for
12 the project and in the land on which said project is located as established for said
13 apartment by the Declaration, or such other interest as hereafter established for said
14 apartment by any amendment of the Declaration, as tenant in common with the other
15 owners and tenants thereof.

16 SECOND:.....

17 Said property is hereby awarded to the husband as his sole and separate property, free and
18 clear of any interest in the Wife. The Husband shall henceforth assume and pay all taxes,
19 utilities, insurance, mortgage and other obligations on said property and hold the Wife
20 harmless and indemnify her from any liability thereon, (including reasonable attorney's
21 fees). In the event of a refinance, the Wife's name shall be removed from the mortgage,
22 but even in the event of no refinance, the mortgage is being assumed solely by the
23 Husband, who agrees to the above hold harmless and indemnification of the Wife.

24 Upon entry of this Decree, the Wife shall execute a Quit Claim Deed in favor of the
25 Husband conveying all right, title and interest in and to the aforesaid real property to the
26 Husband. Upon the Wife's failure to so convey all right, title and interest in and to said
27 property, this Decree shall be, constitute and operate as such conveyance, and the County
28 Auditor is hereby authorized and directed to transfer and record the same for a public
record of such conveyance. The parties shall cooperate in any re-execution of documents
which might be needed in order to amend or correct a legal description.

3.3 Employment Benefits

Each party shall retain as his or her sole and separate property, free and clear of any
interest in the other, all those rights and benefits which have been derived as the result of
his or her past or present employment, union affiliations, military service, United States
or other citizenship and/or residence within a state including, but not limited to:

Various forms of insurance, right to social security payments, welfare payments,
unemployment compensation payments, disability payments, Medicare and Medicaid
payments, retirement benefits, sick leave benefits, educational benefits and grants,

1 interests in health or welfare plans, interests in profit-sharing plans, and all other
2 legislated, contractual and/or donated benefits, whether vested or non-vested and whether
3 directly or indirectly derived through the activity of that specific party; provided,
4 however, that said benefit or benefits have not been otherwise divided below. Each party
5 is specifically awarded his or her own retirement and 401(k) benefits.

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10 **3.4 Property to be Awarded the Husband**

11 The husband is awarded as his separate property, free and clear of any right, title or claim
12 of the Wife, the property listed in Exhibit H, attached, and the Wife hereby quit claims
13 and conveys all of said property to the Husband. This Decree, when executed, shall serve
14 as a document of conveyance from the Wife to the Husband of the property listed in
15 Exhibit H.

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20 **3.5 Property to be Awarded to the Wife**

21 The Wife is awarded as her separate property, free and clear of any right, title or claim of
22 the Husband, the property listed in Exhibit W, attached, and the Husband hereby quit
23 claims and conveys all of said property to the Wife. This Decree, when executed, shall
24 serve as a document of conveyance from the Husband to the Wife of the property listed in
25 Exhibit W.

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28 **3.6 Liabilities to be Paid by the Husband**

The Husband shall pay one half of the parties' remaining 2008 tax debt after the funds held
in the Bugni trust have been applied to the debt.

The Husband shall pay half of the Wife's Nordstrom Credit Card debt which is: \$5,364.02

The Husband shall pay ½ of all bills for CPA Mark Hutchinson

The Husband shall pay ½ the outstanding bill for attorney Julie Dickens which is: \$935.00

Unless otherwise provided herein, the Husband shall pay all liabilities incurred by him
since the date of separation, which was August 31, 2009. He shall pay all debts secured by
all assets awarded to him. He shall pay all credit card debts in his name alone, which are:

If for any reason the Wife must pay on or has collection taken against her on debts payable
by the Husband, the Wife may seek a judgment against the Husband for any amounts she
has paid, plus reasonable attorney's fees and court costs. Said judgment may be obtained
under this cause number by proof from affidavit on the Family Law Motions Calendar
unless the Judge/Commissioner determines to set the matter for testimonial hearing.

1 **3.7 Liabilities to be Paid by the Wife**

2 Wife shall pay \$11,000 to husband to reimburse him for payments he made toward the
3 Odin Way mortgage while this action was pending.

4 The Wife shall pay the Husband \$2,650 for jewelry missing from the safe deposit box.

5 The Wife shall pay half of her Nordstrom Credit Card debt which is: \$5,364.02

6 The Wife shall pay her Bank of America Credit Card debt.

7 The Wife shall pay her Chase VISA Credit Card debt.

8 The Wife shall pay her Capitol One VISA Credit Card debt.

9 The Wife shall pay her Macy's Credit Card Debt.

10 The Wife shall pay her Victoria's Secret Credit Card Debt.

11 The Wife shall pay her Keybank Credit Card Debt

12 The Wife shall pay 1/2 of all bills for CPA Mark Hutchinson

13 The wife shall pay 1/2 the outstanding bill for attorney Julie Dickens which is: \$935.00

14 Unless otherwise provided herein, the Wife shall pay all liabilities incurred by her
15 since the date of separation, which was August 31, 2009. She shall pay all debts secured
16 by all assets awarded to her. She shall pay all credit card debts in her name alone, which
17 are not already been divided by this Decree.

18 If for any reason the Husband must pay on or has collection taken against her on debts
19 payable by the Wife, the Husband may seek a judgment against the Wife for any amounts
20 he has paid, plus reasonable attorney's fees and court costs. Said judgment may obtained
21 under this cause number by proof from affidavit on the Family Law Motions Calendar
22 unless the Judge/Commissioner determines to set the matter for testimonial hearing.

23 **3.8 Hold Harmless Provision**

24 Each party shall hold the other party harmless from any collection action relating to
25 separate or community liabilities set forth above, including reasonable attorney's fees and
26 costs incurred in defending against any attempts to collect an obligation of the other party.

27 **3.9 Maintenance**

28 Does not apply.

3.10 Continuing Restraining Order

Does not apply.

3.11 Protection Order

Does not apply.

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3.12 Jurisdiction Over the Children

Does not apply because there are no dependent children.

3.13 Parenting Plan

Does not apply.

3.14 Child Support

Does not apply.

3.15 Attorney Fees, Other Professional Fees and Costs

No additional attorney's fees are awarded.

3.16 Name Changes

3.16.1 The wife's name shall be changed to Barbara Nystrom.

3.16.2 The husband's name is changed to Jay Jerry Congleton.

3.17 Other

3.17.1 Property Disbursal. There is no known property which is assigned by this Decree which remains to be delivered to either party by the other party. However, to the extent such property exists or becomes known, each party shall allow the other party and persons assisting them unhindered and unharassed access upon 72 hours' notice for the purpose of removal of said property listed above and each party shall take possession of said property listed above as practical following entry of this Decree.

3.17.2 Undisclosed Debts. Any debt or obligation, not specifically awarded herein, incurred by either party, shall be the sole and separate obligation of the party who incurred it and who failed to disclose it in the Decree. If an undisclosed debt was incurred by the parties jointly, then the parties shall remain jointly liable.

3.17.3 Undisclosed Assets. There are no known assets (i.e., bank accounts, retirement accounts, investment accounts, etc.) which have not been divided by the parties prior to the date of this Decree or by this Decree. Any assets owned by the parties on the date of the Decree which either party has failed to disclose shall be divided 50/50 by the court upon motion by either party.

3.17.4 Revocation of Wills, Powers of Attorney and Other Instruments. All previous wills, powers of attorney, contracts and community property agreements between the parties hereto are hereby revoked and the parties are prohibited from exercising same.

1 3.17.5 Enforcement Expenses. If either party defaults in the performance of any of the
2 terms, provisions or obligations herein set forth , and it becomes necessary to
3 institute legal proceedings to effectuate the performance of any provisions, of this
4 Decree, then the party found to be in default shall pay all expenses, including
reasonable attorney fees, incurred in connection with such enforcement
proceedings.

5 3.17.6 COBRA Entitlements. Until a Decree of Dissolution is entered in this case, the
6 Wife shall continue to provide medical insurance coverage for the Husband through
7 her employer. The Husband must now pay any non-employer paid premiums. Per
8 the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Wife
9 shall then cooperate with the Husband and her employer in continuing to provide
for the benefit of the Husband at his expense any medical, dental or other insurance
currently in effect through her employment.

10 3.17.7 Federal Income Tax. The parties shall file separately for the year 2009. Each party is
11 ordered to pay 50% of the outstanding tax liability (personal and corporate) for 2008 and
12 2009. (See paragraph 3.6 which provides that the Petitioner's 50% liability for 2009
taxes has been offset against the promissory note to Respondent).

13 The parties are ordered to maintain in good order all tax returns, property records, and
14 documents related to any tax returns filed during the marriage, which are in that party's
possession.

15 In the event that any prior income tax returns of the parties should be audited for any year
16 during the marriage, any additional tax found to be due thereby (including penalties and
interest) shall be paid in the same proportion as the parties' reported incomes and any
17 refund due shall be divided in the same proportion as the parties' reported incomes.

18 The parties intend that the property and debt division made in this Decree will result in no
19 recognition of taxable gain or loss to either party, and that neither party shall adjust the
basis of any asset or debt awarded or distributed pursuant to this Decree for income tax
20 purposes as a consequence of the division.

21 3.17.8 Warranty Against Liens. Each party warrants the other that there are no
22 undisclosed liens, encumbrances, or defects of title attached to or affecting any of
23 the property awarded to the other party herein. Should any encumbrances, liens or
24 clouds of title created or incurred prior to the date of recording this Decree exist but
25 not be disclosed herein, the party incurring the encumbrance, lien, or clouds of title
26 shall be responsible and shall pay all costs (including attorney's fees) for removing
27 the lien, encumbrance or cloud of title from the property. Should the encumbrance,
28 lien or cloud of title have been acquired or incurred jointly, each party shall pay for
one-half of the encumbrance, lien or cloud of title and one-half of the attorney's
fees and costs incurred in removing the encumbrance, lien or cloud of title from the
property.

1 3.17.9 Performance of Necessary Acts. Each party shall execute any and all deeds, bills of
2 sale, endorsements, forms, conveyances or other documents, and effectuate any and
3 all of the purposes and provisions herein set forth. Upon endorsement, form,
4 conveyance or other document to the other party, the Decree shall constitute and
5 operate as such properly executed document. The County Auditor and any and all
6 other public and private officials are authorized and directed to accept the Decree or
7 a properly certified copy thereof in lieu of the document regularly required for the
8 conveyance of transfer.

9 3.17.10 Delivery/Judgment. Each of the parties shall take all steps necessary to see that all
10 of the provisions contained in this Decree are given full effect. Each party shall
11 make delivery to the other party within 30 days of the date hereof those items of
12 personal property awarded to the other party which are at the present time in his/her
13 possession. Each party shall make available to the other those records relating to
14 assets awarded to the other party which are in his or her possession. The parties
15 will contact one another and make suitable arrangement for the delivery and receipt
16 of said documents and/or items of personality. Each party is obliged to exert his or
17 her best efforts to complete these transfers.

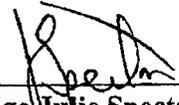
18 If either party fails to transfer property as required by this Decree or otherwise
19 fulfill any obligations which are non-liquidated or nonmonetary, the aggrieved
20 party may seek a judgment against the non-complying party under this cause
21 number, plus reasonable attorney's fees and court costs, in an amount equivalent to
22 the property not conveyed or other obligation not satisfied. Said judgment may be
23 obtained by proof from affidavit on the Family Law Motions Calendar unless the
24 Commissioner determines to set the matter for testimonial hearing.

25 3.17.11 All Previous Restraining Orders Are Vacated. All previously-issued restraining
26 orders in this case are now vacated.

27 3.17.12 Lease of Rental Home at 16207 40th Avenue SE, Bothell, WA 98012. Any and
28 all purported lease entered into between the Petitioner and her son, Paul Nystrom,
relating to this property was done without legal standing or authority and is null
and void. Paul Nystrom shall vacate this Property not later than September 30,
2010 and any failure by Paul Nystrom to pay the monthly rent pursuant to the
verbal month-to-month tenancy agreement of \$1,700 and utilities and any and all
liability for alleged breach of said purported lease by the Petitioner's son and his
family, including but not limited to attorney fees, shall be the Petitioner's sole and
separate responsibility. Respondent may obtain judgment against Petitioner for
these liabilities upon proof by affidavit on the Family Law Motions Calendar
unless the Commissioner determines to set the matter for testimonial hearing.

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Dated: 9/27/2010


Judge Julie Spector

Presented by: _____

Approved for entry: _____

Veronica Freitas, WSBA No.19405

Margaret Doyle Fitzpatrick/WSBA 8893

Date: _____

Date: _____

EXHIBIT W

Property Awarded to Barbara Congleton.

The Wife is awarded as her separate property, free and clear of any right, title or claim of the Husband, the following property, and the Husband hereby quit claims and conveys all of said property to the Wife. This Decree, when executed, shall serve as a document of conveyance from the Husband to the Wife of the following property:

1. All furniture, furnishings, clothing, personal items and personal property of any description presently in her possession except for husband's property awarded in the court's findings.

2. All bank accounts, savings accounts and credit union accounts in her name only.

3. All life insurance policies insuring her life, for which the Husband is hereby divested of any interest as beneficiary.

4. The following real property commonly known as 9419 Odin Way, Bothell, King County, WA.

5. The Wife's 2006 Lexus ES 330. The Wife shall become solely obligated for all payments due or which may become due for the use, operation, maintenance and financing thereof, and shall hold the Husband harmless thereon.

6. Any property acquired by the Wife prior to marriage on July 13, 2003, or subsequent to the date of the parties' separation of August 31, 2009 not otherwise allocated to the Husband herein.

7. Any and all retirement plans or 401k plans or IRAs in her name.

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EXHIBIT H

Property Awarded to Jay Congleton.

1. All furniture, furnishings, clothing, personal items and personal property of any description presently in his possession .
2. All bank accounts, savings accounts and credit union accounts in his name only and in the name Vanguard Consulting.
3. All life insurance policies insuring his life, for which the Wife is hereby divested of any interest as beneficiary.
4. The following real property commonly known as 16207 – 40th Avenue SE in Bothell, King County, WA.
5. The Husbands 2007 Hyundai and 2009 Mercedes. The Husband shall become solely obligated for all payments due or which may become due for the use, operation, maintenance and financing thereof, and shall hold the Wife harmless thereon.
6. Any property acquired by the Husband prior to marriage on July 13, 2003, or subsequent to the date of the parties' separation of August 31, 2009 not otherwise allocated to the Wife herein.
7. Any and all retirement plans or 401k plans or IRAs in his name.
8. All right, title and interest in and to the business known as Vanguard Consulting and all assets thereto, including but not limited to bank accounts, accounts receivables, work in progress, tools and equipment.
9. Maui Time Share commonly known as Ocean Resort Villas, 6 Kaiala Drive, 2227/29-40AP, Lahaina, HI 96761.

DECLARATION OF SERVICE

On said day below I emailed and deposited in the U.S. Mail a true and accurate copy of the following document: Brief of Appellant in Court of Appeals Cause No. 66138-8-I to the following:

Margaret Doyle Fitzpatrick
Michael W. Bugni & Assoc.
11300 Roosevelt Way NE, Suite 300
Seattle, WA 98125-6228

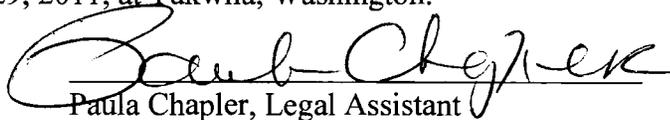
Veronica A. Freitas
V. Freitas Law PLLC
210 Summit Avenue E.
Seattle, WA 98102-5619

Patricia Novotny
3418 NE 65th Street, Suite A
Seattle, WA 98115

Original sent by ABC Legal Messengers for filing with:
Court of Appeals, Division I
Clerk's Office
600 University Street
Seattle, WA 98101

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: April 29, 2011, at Tukwila, Washington.


Paula Chapler, Legal Assistant
Talmadge/Fitzpatrick