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No. 65739-9-I

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IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON, DIVISION ONE

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In Re the Marriage of  
  
FAITH L. SMITH,  
  
Appellant/Cross Respondent  
  
And  
  
Ford B. Smith  
  
Respondent/Cross Appellant

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BRIEF OF RESPONDENT/CROSS APPELLANT  
FORD B. SMITH

---

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ORIGINAL

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## I. INTRODUCTION

The Wife must show that the Trial Court's property division dividing the community property equally between the parties, treating the \$167,000 community loan to the Wife as a pre-distribution of community property, and awarding the separate property to each of the parties was a manifest abuse of discretion: **the Wife has not**. It was fair and equitable under RCW 26.09.080 and under California Family Code §2550. The Trial Court awarded the family home to the Husband subject to a lien in favor of the Wife and ordered that it be sold. There was sufficient evidence to support the disposition of the property before the court and the court's ruling on admissions was never appealed.

With respect to the amount of and duration of maintenance, the Wife must show that the court's award of maintenance was a manifest abuse of discretion. The Wife has failed to do so. In view of the amount of post-separation financial support the Husband had already paid to the Wife, both voluntary and involuntary, the length of the marriage, and Wife's admission that she planned to move to Cebu, Philippines where the cost of living (excluding rent) is substantially lower, the Trial Court's award of maintenance was not an abuse of discretion. This court should affirm the Trial Court's award of maintenance.

This court should reverse the Trial Court's denial of the Husband's request for an award of attorney's fees against the Wife for her violation of pre-trial court orders, her failure to provide required pre-trial discovery, her failure to bargain in good faith both at the settlement conference and at the mediation, and taking untenable positions at the trial not supported by the evidence, such as demanding \$4,000,000 cash from the Husband, her at-trial changes to her responses to Interrogatories and Production of Documents propounded to her over 1 ½ years earlier, and her use of trial-by-ambush tactics. In addition, the court should award attorney's fees in favor of the Husband against the Wife for having to respond to this appeal.

## II. RESTATEMENT OF ISSUES

A. Should the Wife's first paragraph in its assignment of error of the entire "Findings of Fact and Conclusions of Law and the Decree of Dissolution of Marriage, all entered on June 24, 2010 and the Order on Show Cause Re Contempt/Judgment entered on August 17, 2010" be stricken because it is in violation of RAP 10.3(g) which requires each finding of fact specified and each paragraph of the Decree and Order be identified?

B. Response to Wife's Assignment of Error No. 1 & 2.

1. Wife's Specific Assignments of Errors in **Assignment 1** is factually inaccurate in that it alleges that the Trial Court failed to value the

Husband's interest in the Robert and Meta Smith Family Limited Partnership ("Smith Family Partnership"): the Trial Court did value the Husband's interest in the Smith Family Partnership at \$837,651. (CP 89-Attachment H-SP; RP Vol. III, p. 13) Since the Wife failed to assign said valuation as error, should this valuation be treated as a verity?

2. The Wife also assigns as error the lack of a valuation of one piece of property - the rental home at SeaTac where the Husband's father lives and rents from his two children (the husband and his sister, Christy Strong) as grounds for reversal.

a. The court did not place a value on the SeaTac home because the Wife did not submit any admissible evidence as to its value and the Husband was unable to value his one half interest in this house on a ½ acre property, (RP Vol. II at 105-106) which is subject to a lifetime lease to his father. (RP Vol. II at 46, 71) Is the Wife estopped from raising the issue of the necessity of a valuation of the Husband's separate property on appeal if the Wife failed to provide any admissible valuation evidence concerning the value of the Smith Limited Partnership and the SeaTac home at trial?

b. In the Wife's brief, Wife did not assign as error the trial court's sustaining of the Husband's objection to the admission of Exhibits 87 and 90, which were the Wife's trial date submission of King County

assessed values as admissible evidence of valuation of the Smith Limited Partnership and a valuation of the rental home in SeaTac Washington. (RP Vol. III at 74 and Vol. IV at 91) Is the Wife precluded from raising the issue of the failure to value the Husband's half interest in a rental home or his interest in the Smith Limited Partnership because the Wife failed to assign as error the court's refusal to admit EX 87 and 99?

**C.** Assignment of Error No. 3: The Wife assigns as error the adequacy of the Trial Court's award of property to her and the award of her post-separation debt to her without specifying what assets and debts should have been awarded to the Wife and what assets and debts should have been awarded to the Husband. Should this assignment of error be deemed so non-specific in violation of RAP 10.3 (a)(4), 10.3(g), which requires specificity as to preclude appellate review of the Trial Court's Findings of Fact 2.8, 2.9 and 2.10, and 2.11 and the Conclusion of Law 3.4 unless specified in another Assignment of Error?

**D.** Assuming the court will review all of the Section 2.8, 2.9, 2.10 Findings, there is substantial evidence to support all of these findings. For example:

**1.** The Trial Court's characterization of the Husband's interest in the Robert & Meta Smith Family, LP as his separate property is based upon the Trial Court's rulings on the Husband's motions at the start of the

trial deeming such characterization as admitted by the Wife (CP109), the documentary evidence of the Trust (Pet EX 2-17), and the testimony of the Husband. (RP Vol. I at 9) Was there an abuse of discretion in the Trial Court's rulings and has the Wife waived her right to appellate review based upon her failure to seek appellate rule of the Order on Admissions?

2. The Trial Court's valuation of the Husband's interest in the Family Partnership in the amount of \$837,651 is supported by the testimony of the husband (RP Vol. III at 13) and the calculations set forth in Pet EX 77. Said valuation was based upon the purchase price of his share of the assets. There was not abuse of discretion.

3. The register setting forth each party's interest in the Family LP was admitted (Pet Ex 3) shows that the Husband has a 37.86% Limited Partnership interest in the Family Partnership.

4. The Trial Court's characterization of the Husband's half interest in the Sea-Tac home as his separate property is supported by the testimony of the Husband and Exhibits (EX 56, 57 & 58) ;

5. The Trial Court's award to the Husband of his half interest in the SeaTac home that was leased to his father, Robert Smith, was well within the Trial Court's discretion since it is his separate property and was transferred to him during the pendency of this dissolution proceeding on August 14, 2008 (RP Vol. II at 46-48; EX 58).

6. The Trial Court had sufficient evidence to support the values of the real property which was the subject of Findings of Fact 2.8, 2.9, 2.10 and 2.11 and there was sufficient evidence to support paragraph 3.4 of the conclusions of law.

**7. The Conclusions of Law are well supported statutorily and under the case law.**

Under either RCW 26.09.080 or California Family Code §2550, and the case law interpreting said statutes, the Trial Court's award of the assets and liabilities of the parties including real and personal property acquired while the parties resided in California are well supported by Washington and California case law and are consistent with the Trial Court's rulings on the Wife's admissions.

**E. Trial Court's Maintenance award was not an abuse of discretion.**

This was a 10 year marriage in which the Wife spent less than 8 years with her Husband with no children of the marriage. Since August, 2006, when the Wife left her Husband, he has paid for the Wife's living expenses, both as temporary maintenance in the amount of \$3,500 per month; and also voluntarily paying for her living expenses, her car expenses, and repairs on the Northridge house while the Wife had exclusive use of the Northridge California home before the temporary maintenance order and after the temporary maintenance order was

terminated. In addition, the Wife has admitted that she planned move to Cebu, Philippines to live in her house where the cost of living is significantly lower than in California and the duration of two years will be sufficient for her to transition to Cebu, Philippines. The Husband has not worked in over 20 years. In view of these circumstances, shouldn't this court affirm the trial court's award of maintenance because it was not an abuse of discretion?

**F. Wife's failed to file timely appeal from Contempt Order.**

Is the Wife precluded from raising any issue or assign as error the Trial Court's decision on Husband's Motion and Order to Show Cause re Contempt, entered August 17, 2010, for failure to file a Notice of Appeal on this issue? Shouldn't the failure to specify the error in the Order on Show Cause re: Contempt preclude review of this Contempt Order? The Decree of Dissolution and Findings of Fact and Conclusions of Law were entered on June 24, 2010 (CP 75-94 – Decree of Dissolution; CP 95-103 – Findings of Fact and Conclusions of Law). Husband filed a Motion and Order to Show Cause re Contempt for Wife's failure to comply with the terms of the Decree and an Order on Show Cause re Contempt/Judgment was entered on August 17, 2010 by Commissioner Thomas L. Verge. (CP 969-73). Wife designates the Order on Show Cause re Contempt/Judgment as an assignment of error in her brief as a general

assignment of error. *Appellant's Brief* at 3. Wife only addresses the sanctions assessed against her in the Order on Show Cause re Contempt in her argument as it relates to the Decree, not as an independent action. *Appellant's Brief* at 11. Wife did not identify the Order on Show Cause re Contempt in the Notice of Appeal, nor has she filed a subsequent Notice of Appeal identifying the Order on Show Cause re Contempt. Wife also did not seek a stay of enforcement of the Trial Court's decision requiring her and her children to move out by July 1, 2010. Finally, no authority was cited as ground for reversal of the contempt order.

**G. No Appeal and no assignment of Error from June 24, 2010 Order on the Motion in Limine for Request for Admissions (CP 75-94 – Order on Requests for Admissions) precludes Appellate Review of the Trial Court's ruling.**

On April 21, 2010, the Trial Court ruled that because the Wife failed to respond to the First Set of Request for Admissions, which were served on Wife on October 19, 2009, these would be deemed admitted. The Wife's attorney made no objection to the admission of the First set of Interrogatories (RP Partial Vol. IA at 13; RP Vol. 1-afternoon session at 1; RP Vol. IV at 38) The Trial Court entered written Findings and an Order on June 24, 2010 with respect to these rulings. (CP 107 - 110)(*See Appendix 1 - Order on Petitioner's Motion in Limine for Order Admitting Truth of First Set of Requests for Admissions and Determination of*

Sufficiency of Answers and Objections of Second Set of Admissions) No appeal has been taken from this order and there has been no assignment of error regarding this Order. Since these rulings are non-reviewable, shouldn't these Request for Admissions 1-22, 23, 24 and 33 as to fact and law be deemed established fact and as verities?

**H. Trial Court should have adopted Husband's proposed Findings of Fact § 2.15 and granted attorney's fees against the Wife as a sanction; Husband should be granted fees incurred on appeal.**

Should the Trial Court have adopted the Husband's proposed findings of fact §2.15 and awarded attorney's fees against the Wife as a sanction for failing to provide discovery as ordered by the court; for failing to admit or deny the truth of the matters or the genuineness of documents requested by Husband requiring him to incur expenses in making those proof; for failing to engage in settlement negotiations and mediation in good faith; and her failure to comply with court rules for introduction of evidence?

**I. Should Husband be awarded his attorney fees on appeal?**

### **III. RESTATEMENT OF FACTS**

**A. Husband became disabled when he was infected with acute meningitis while serving in the U.S. Marines.**

In 1970, the Husband contracted acute meningitis while serving in the U.S. Marines in 1970 and has a permanent disability. (PET EX 1) He

has a limited work history earning around \$7.00 per hour as a temporary postal worker, but did not qualify as a permanent worker and has not worked for over 20 years. (RP Vol. II at 130-131) Husband receives a disability pension from the Veteran's Administration of \$123 per month. (RP Vol. IB at 5) He is 62 years old. (RP Vol. IB at 3) This ten year marriage was his first marriage. (RP Vol. IV at. 130) The wife is 65 years old. (RP Vol. IV at. 149) This is wife's second marriage and she has two adult children from her first marriage.

**B. Husband's interest the Robert and Meta Smith Family Limited Partnership is his separate property.**

1. On December 4, 1989, Robert and Meta Smith gifted Ford Smith and his sister, Christy Strong, limited partner units in a family partnership called the Robert and Meta Smith Family Limited Partnership ("Smith Limited Partnership") (PET EX 2) which owns land burdened by a ground lease to the Double Tree Inn ("the Ground Lease"). He has a 37.86% limited partner interest (Pet EX 3, last page). The corpus of the Limited Partnership is land subject to a long term ground lease to the Double Tree Inn, now owned by the Hilton Corporation.

Each of the partners receives monthly distributions of the pro-rata share in Double Tree's monthly lease payment. Presently, after deduction of the payments on the promissory note, his net distribution is in the

amount of \$8,800 per month (CP 125). The husband also receives separate income of \$900 per month from the rent that his father is paying on the Sea Tac home that he co-owns with his sister, Christy Strong, but this rental income is offset by the cost of the real estate taxes, repairs, and insurance, there was a loss of \$488.11 (RP Vol. II at. 46-48) Thus, he receives no net cash from the SeaTac rental home.

**2. History of the transfer of shares of the Family Limited Partnership.** The initial units in the Limited Partnership were gifted to the husband and his sister, Christie Strong, in equal numbers, as set forth in the unit register (PET EX 2). Other units were gifted to Christie and Ford. In addition, the two children purchased other units by signing promissory notes which Unit Assignments were admitted (PET EX 4 through 13).

On December 29, 1994, the Husband signed a Unit Purchase Agreement to buy 125 units for \$92,137.50 and a promissory note which called for monthly payments. (PET EX 13-14). In addition, on July 1, 1996, he signed a second unit purchase agreement to buy an additional 125 limited partnership units for \$112,709 and signed a promissory note for the same amount. He has not received any more units since then. There are a total of 2454 Units in the Family Limited Partnership (PET EX 3, p.6). Ford Smith has a total of 929 units or 37.86% of the Robert

and Meta Smith Family Limited Partnership and his sister has sister has 929 units or 38.27% (PET EX 3, p. 6).

**3. Ruling on Husband's Motion in Limine.** Husband made a Motion to have the First and Second Set of Request for Admissions admitted for the truth of what is set forth in those Request for Admission as well as the conclusions of law. On April 21, 2010, the Trial Court granted the Husband's motion as to the entire First Set of Request for Admissions (Nos. 1-22) and granted the motion to admit as to Numbers 23, 24 and 33 of the Second Set of Requests for Admission. (CP 123 & 126 - Order on Petitioner's Motion in Limine; Exhibits 1&2)(PET EX 90). With respect to the Husband's Request for the Wife to admit that the Husband's interest in the Family Limited Partnership is his separate property, RFA No. 23, the court granted Husband's motion because the Wife's objection was improper. In addition, the Wife, in effect, admitted that this asset was entirely the husband's separate property by admitting the First Set of Request for Admissions ("1RFA") that the Husband acquired this interest prior to the wife meeting the Husband (1RFA #1), that any increase in value is based upon the ground lease, (1RFA #4) if any, and she had no evidence that his interest had a community character (1RFA #8).

The Trial Court valued the Husband's separate property interest in the Family Limited Partnership at \$837,651. The evidence upon which the trial judge based its valuation was the testimony of the Husband that he paid \$901.67 for each additional unit that he purchased. (RP Vol. III at 13) The unit price was then multiplied times the 929 units Ford Smith owns for a total of \$837,651. The calculations were then admitted as (PET EX 77) (RP Vol. III at. 13).

**C. The Husband's half share in the Sea Tac home is the Separate Property of the husband and should be awarded to him.**

On June 11, 1996, the Husband's father, Robert Smith, transferred his SeaTac house to the Robert G. Smith Qualified Personal Residence Trust of 1996. (PET EX 56) The two beneficiaries of the trust were the Husband and his sister, Christy Strong. (PET EX 57, Ex 1) On August 14, 2008, the husband received a one-half interest in his father's residence and his sister, Christie Strong, received the other half. (PET EX 57, Ex.2) The SeaTac house is burdened by a lease of indefinite length to his father who resides there. (RP Vol. IV at 120) The rental income does not cover the expenses for real estate taxes, insurance, and repairs. (RP Vol. II at48) The Trial Court's characterization of that property as the separate property of the Husband was based upon sufficient evidence, ample documentary evidence and the award of said property to the Husband was not an abuse

of discretion. The Husband does not handle the finances on the house. His sister does. He reviewed his tax return for 2009. It showed that he lost money on the Sea Tac Home in the amount of \$488. (RP Vol. II, p. 48, ll. 19-20; PET EX 31-2009 Tax Return, Schedule E) When the Husband testified, he had difficulty determining the market value of his ½ interest in the house because he and his sister agreed to rent the house to his father indefinitely. (RP Vol. II at 46) In effect, the father has a life estate in the house. For that reason, the Husband was unable to give an opinion on its market value.

The court would not admit the King County assessment for several reasons: first there was no evidence that it was a reliable source of a market valuation. Secondly, he denied the request to admit as a discovery sanction for the Wife's last minute change in her answers to Interrogatories, her failure to identify that this was going to be introduced prior to trial in order to give the Husband's attorney sufficient time to obtain an expert opinion as to value of the Husband's half interest and the failure of the Wife's attorney to ask any questions about the value of the SeaTac Property (RP Vol. III at 74).

**D. The Husband acquired a half interest in the Wife's Northridge home upon his payoff of the mortgage balance of \$189,145.54 with his separate funds.**

1. On December 13, 1996, three months after the Parties married, the Husband paid off the existing mortgage of \$189,145.54 with his life savings. (RP Vol. IB-Trial, pp. 35-39; PET EX 36, 37, & 38) The parties were residents of California at the time. (PET EX 32-34) The Wife agreed to give him a half interest in the Wife's Northridge home in return for the payoff of her mortgage.

2. **Wife signed Quit Claim Deed transferring her interest to community.** On November 17, 1998, the Wife memorialized this agreement by transferring title from her to Ford Smith and Faith Smith and recording it on December 8, 1998. The Trial Court also deemed--Request for Admission No 24—admitting that the parties were joint owners of the Northridge Property (CP 123) as an admission. Under *California Family Code Section 2581*, Property acquired during the marriage in joint form is presumptively community property, rebuttable by written agreement or other documentary evidence. The grant of the motion in Limine was, in pertinent part, based upon the Wife being in violation of CR 36(a) by failing to perform due diligence before answering this Request for Admission and because of her admission in her June 10, 2009 deposition that she and her Husband were joint owners of the Northridge house. (Pet EX 39;CP 454 - Petitioner's Motion in

Limine (April 16, 2010) at 5) The court concluded that the Northridge home was community property.

3. Under California law, community property must be divided equally upon dissolution of the marriage of the parties. (CP 578) California Family Code §2550; this code section is construed as a mandate that the Trial Court is **required to divide equally** the net community estate. *In re Marriage of Cream* (1993) 13 Cal.App.4<sup>th</sup> 81, 88 (except as otherwise specified, “the court possesses no authority to divide the community estate between the parties other than equally”). The Trial Court’s characterization of the Northridge home as community property, his award of 50% of the community property to the Husband was not a manifest abuse of discretion and was based upon sufficient evidence.

**E. The court’s ruled that Wife’s borrowing \$167,000 from the community property to build her own house in Cebu, Philippines was a pre-distribution to her share of the community property.**

1. Wife decided to move back to the Philippines. The Wife was born in the Philippines, married Virgil Tan, had two children who are ages 33 and 30 and a grandson and then divorced him. In 2002, the Wife decided that she wanted to move back to the Philippines to live there. The Wife wanted to borrow \$167,000 to build her own house in Cebu, Philippines. (RP Vol. III at 65) At the end of 2002, they signed an

agreement for her to borrow \$167,000 for her own separate house there and to pay back that money upon sale of the house.

**F. Wife removed \$167,000 from the HELOC.** In January, 2003, a Home Equity Line of Credit on the Northridge, California was obtained; once it was obtained, that same month, she began withdrawing from that line of credit for a total of \$167,000. (RP Vol. II, p.21; PET EX 41-WAMU Loan Transaction Report)

**G. Wife failed to provide an accounting of funds. Evidence showed that she diverted funds for her son and grandchild and her daughter-in-law without her husband's knowledge.**

On December 12, 2008, Court Commissioner Thorne sanctioned the Wife for disobeying the October 16, 2008, court order concerning the March 2008 ruling requiring the Wife to provide an accounting of the \$167,000 in funds withdrawn, her failure to produce bank records showing where the funds were deposited, building contracts, land purchase documents, and other financial records relating to what she did with the monies that she withdrew. (CP 879-880-Order on Default-Termination of Maintenance) In addition, she failed to provide information and documents relating to her other acquisitions in the Philippines, e.g. the Toyota that she bought there, and her investments in California and for her failure to respond to the Interrogatories. One of the sanctions was that maintenance would be terminated unless she complied with the Order.

She did not. (CP 879-880, *supra*; (CP 716 - Denial of Re-instatement of Maintenance).

After separation, the Husband found the Wife's letter to her daughter-in-law's divorce attorney, Kathy Neumann, in which she admitted paying for her son's brand new Toyota, paid for her apartment, car insurance, the monthly car loan, TV, bed, stereo Toaster, paid for most of the costs of her grandson. These were all paid without the consent of the Husband. (RP Vol. II, p. 30-31; PET EX 50)

Husband incurred substantial attorney's fees seeking to trace the funds withdrawn from this account. (CP 461 - Declaration of Robert T. Czeisler in Support of Petitioner's Motion in Limine). Attorney's fees were awarded, but still have not been paid. The attorney fee award, even if paid, did not cover the actual fees incurred. (CP 716 - Order on Motion to Compel an For Temporary Maintenance) In view of the Wife's non-compliance with court ordered discovery and the substantial evidence supporting the enforcement of the 2002 loan agreement, the court did not manifest an abuse of discretion to credit the wife with a \$167,000 pre-distribution and said award was based upon sufficient evidence.

**H. Wife was making greater and greater demands for the husband to financially support her adult children. In 2000, the parties agreed to move to Bellingham in the hopes of salvaging the marriage.**

Twice a year, the Wife would leave the Husband to return to Northridge, California and then, in 2003, the Wife left the husband and moved to Cebu Philippines where she lived for 13 months. (RP Vol. IV at 55-57) During that time, she bought land, entered into a construction contract to build a house, and bought a new car which is still there. (RP Vol. IV., p. 47-48) (PET EX 79, p. 48, l. 25 and p. 49, ll. 1-5 -Portion of Deposition of wife).

When the Wife returned from the Philippines in 2004, they lived together in Bellingham until August 6, 2006. (RP Vol. II at 32) The Wife flew back to Northridge, California, living in their house. She asked the Husband to drive her LEXUS and fill it up with her belongings there, which he did. (RP Vol. IV. at 64) She was not coming back to live with him in Bellingham and he was not going to live with her there. The husband continued to support her and her adult children while she lived with them in Northridge, California. (RP Vol. II. at 32-34)

**I. There were several hearings on temporary maintenance and on sanctions for wife's failure to comply with discovery orders.**

After the Wife kept making unreasonable demands upon him for more and more money each month, he retained an attorney and filed a petition to dissolve the marriage on May 11, 2007. Starting in March, 2008, the Husband was ordered to pay maintenance in the amount of

\$3,500 per month. Because of the Wife's refusal to comply with the court's discovery order, maintenance was terminated in January 2009 (CP 879-880, *supra*). On May 6, 2009, Court Commissioner Heydrick denied the Wife's motion to reinstate maintenance and imposed additional sanctions against the Wife of \$3,000 for her wanton disobedience of court orders. The trial court found that the date of filing was the date of separation. Since the court's termination of the temporary maintenance while this action was pending, the Husband voluntarily paid over \$48,000 to support the Wife (RP Vol. IV., p. 130; PET EX 102).

**J. Notice of Intent To Plead Foreign Law was properly submitted to the Trial Court for consideration. If California law, which governs division of assets acquired during the parties' residence in California during the marriage, applied, the trial court followed the statutory and appellate law governing the disposition of the Northridge property**

As part of his case-in-chief in the trial in this matter, Husband submitted a Notice of Intent to Plead Foreign Law in accordance with CR 9(k), providing notice of intent to plead California Statutes and Case law as applying to the facts of this case. (CP 686-691 – Notice of Intent to Plead Foreign Law; CP 573-681 – Supplemental Notice of Intent to Plead Foreign Law). The trial in this matter was originally set for February 11, 2009 and was subsequently reset four additional times. (June 23, 2009, September 22, 2009, November 24, 2009; and February 2, 2010). (CP

872-73 – Agreed Order Setting Trial Date Commissioner David M. Thorne; CP 868-69 – Amended Agreed Order Setting Trial Date; CP 1118 - Trial Setting Order; CP 1117 - Trial Setting Order). The parties finally agreed to utilize Leon Henley as Judge Pro Tem to ensure a trial in their matter. (CP 1037-1040 - Stipulation and Agreed Order Striking Trial Date and Setting Matter before Pro Tem Judge).

The initial Notice of Intent to Plead Foreign Law was filed with the court on June 19, 2009. The Supplemental Notice incorporates the statutes and case law provided with the initial Notice of Intent to Plead Foreign Law and was filed with the court on January 22, 2010 as its own filing and also submitted with Petitioner's Second Amended Supplemental ER 904 Notice of Intent to Offer Documents. (CP 1045)

Husband argued in his Trial Brief that California law governs over the marital assets and debts that were acquired while the parties lived in California and should therefore be applied in the division thereon. Under California law, community property must be divided equally. (CP 500-66) (*See Appendix 2 - California Family Code §2550*). This code section is construed as a mandate that the trial court is **required to divide equally** the net community estate. *In re Marriage of Cream* 13 Cal.App.4<sup>th</sup> 81, 88 (1993). (*See Appendix 3*) Husband also argued in his closing argument that California law should apply. (RP VOL. IV, pp.136-38) Included in

his argument is that Husband was entitled to credits for the fair rental value of the Northridge house that was being occupied by Wife, as set forth in California case law, *In re the Marriage of Watts*, 228 Cal.App.3d 548 (1991) (*See Appendix 4; see also Appendix 5 - In re the Marriage of Jeffries* (1991) 228 Cal.App.3d 548). At the Wife's deposition, Husband elicited testimony from Wife her opinion about the fair rental value of the Northridge home (RP VOL. IV, at 29-34; PET EX 79-Deposition transcript pp. 64-65). The Trial Court declined to grant *Watts* credits to the Husband for the rental value of the Northridge home. (CP 97 - Findings at 3 ll. 11-20)

**K. Maintenance award of \$3,000 per month for 2 more years was not an abuse of discretion.**

The Wife has a college degree in Sociology from Cebu, Philippines and is 65 years old. (RP Vol. III at 42-44) Since the court's termination of the temporary maintenance while this action was pending, the Husband voluntarily paid over \$48,000 to support the wife (RP Vol. IV., p. 130; PET EX 102; CP 99-Findings at 5). The Trial Court ordered an additional 2 years of maintenance to the Wife in the amount of \$3,000 per month in order to give the Wife sufficient time to transition to Cebu, Philippines where the cost of living is substantially less. (CP 360 – 361) In addition, the Husband is still paying the interest on the \$167,000 loan,

all of the utilities, insurance and payments for maintenance of the Northridge home, his Bellingham apartment and his attorney's fees. In view of the length of the marriage, the financial circumstances of the parties, the Trial Court's award of maintenance is not an abuse of discretion.

Wife's demand for permanent maintenance was premised upon her being unable to work, yet she failed to provide any expert testimony showing that her various ailments caused her to be unable to work. As part of discovery sanctions, the Husband sought the exclusion of any testimony concerning her medical condition because the Wife refused to provide her treating doctor's medical records. (RP Vol. III at 6 - 11). The court allowed her testimony for a limited purpose. There was a lack of foundation for such a finding and none was made. The husband objects to the court finding that she will not be able to work. The request for \$6,000 per month in permanent maintenance was determined to be an improper lien on the separate property of the Husband.

**L. Trial Court's declined to award additional sanctions against the wife for her failure to engage in good faith negotiations, her failure to act in good faith in trying to settle this matter**

In the undersigned declaration with regard to attorney's fees, the undersigned testified as to the Wife's storming out of the mediation session before Ronald Morgan, an experienced mediator as evidence of the Wife's refusal to bargain in good faith and the fees incurred:

“My client incurred \$3,410 in attorney's fees for preparation of the mediation material and submission. The respondent did not engage in good faith. Instead of engaging in mediation, she walked out of the mediation, entered the room where Ford Smith and I were in conference, started yelling at Mr. Smith and stormed mediation room without responding to our second offer.”  
Declaration of Robert Czeisler (June 7, 2010) at 2 (CP 1128)

This was undisputed. The Trial Court excluded any evidence concerning bad faith settlement negotiations and struck those provisions in the proposed findings. (CP 100-103) This was error. *ER 408; Matteson v. Ziebarth*, 41 Wash. App. 286, 294 (1952) (settlement evidence admitted to prove lack of good faith). In addition, the Wife refused to listen to her many attorneys concerning a likely outcome, her intransigence in terms of providing discovery as to the \$167,000, her providing her medical records, and her outrageous demand: \$4,000,000 in cash, \$6,000 per month for life.

**M. Wife failed to timely file a Notice of Appeal identifying an assignment of error the Trial Court's decision on Husband's Motion and Order to Show Cause re Contempt against her and therefore is precluded from arguing that order on appeal.**

The Decree of Dissolution and Findings of Fact and Conclusions of Law were entered on June 24, 2010 (CP 75-94 – Decree of Dissolution; CP 95-103 – Findings of Fact and Conclusions of Law). Husband filed a Motion and Order to Show Cause re Contempt for Wife’s failure to comply with the terms of the Decree and an Order on Show Cause re Contempt/Judgment was entered on August 17, 2010. (CP 969-73). Wife designates the Order on Show Cause re Contempt/Judgment as an assignment of error in her brief as a general assignment of error. *Appellant’s Brief* at 3. Wife only addresses the sanctions assessed against her in the Order on Show Cause re Contempt in her argument. *Appellant’s Brief* at 11. Wife did not identify the Order on Show Cause re Contempt in the Notice of Appeal, nor has she filed a subsequent Notice of Appeal identifying the Order on Show Cause re Contempt. Wife also did not seek a stay of enforcement of the Trial Court’s decision.

#### IV. ARGUMENT

A. **The court of appeals should not review the wife’s general assignment of error all of the Findings of Fact and all of Section 3.4 of the Conclusions of Law.**

Appellant-wife assigns as error “the Finds of Fact, Conclusions of Law, Decree of Dissolution of Marriage, all entered on June 24, 2010” without specifying which portions of the Findings and Decree are

erroneous. *Appellant's Brief* at 3. Such a general assignment is prohibited under RAP 10.3(g). This Court should not review a general assignment of error of Findings of Fact when the assignment does not refer to a specific number and paragraph and is so vague as to require a search of the record. *See, e.g., Pederson v. Pederson*, 41 Wn.2d 368, 249 P.2d 385 (1952) ; *Erdmann v. Henderson*, 50 Wn.2d 296, 311 P.2d 423 (1957); *State v. Tanzymore*, 54 Wn.2d 290, 340 P.2d 178 (1959). *Escude ex rel. Escude v. King County Pub Housing*, 117 Wash.App.183, 190 (2003); *Holland v. City of Tacoma*, 90 Wash.App. 533, 538; RAP 10.3(a)(5).

**B. Findings of Fact §§ 2.8, 2.9, 2.10, 2.11, and Conclusions of Law 3.4 should not be reviewed because the assignments of error with respect to them lack the specificity required under RAP 10.3(g) and 10.4(c).**

Assignment of Errors 1 & 2 in Appellant's brief contain broad attacks on all of Sections 2.8, 2.9, 2.10, and 2.11 of the Findings of Fact and Conclusions of Law 3.4. Section 2.8 alone contains 5 paragraphs each of which relate to a different asset. The first paragraph of §2.8 relates the Northridge property, the second with respect to rental value credits, the third relates to community personal property, and the fourth having to do with the Bellingham apartment. By making a wholesale objection, the wife fails to set forth what is at issue in Section 2.8. Section 2.9 sets forth the court's findings as to what is the Husband's separate property and

what is the wife's separate property. The court awards each party his or her separate property. In a portion of Section 2.9 of the Findings, the Trial Court set forth its reasoning for sanctioning the Wife for its untimely submission of valuations and for its not placing a value on the Husband's half interest in the Sea Tac home:

“Petitioner’s deposition was on August 4, 2009. Her attorney did not ask Ford Smith for a valuation of the SeaTac home. Respondent’s attorney did not request an appraisal from the husband nor did she employ an appraiser at any time prior to trial. The respondent has not provided any grounds for her neglecting to value this asset or asking Petitioner to do so raising this lack of value only post-trial. Since this is the husband’s separate asset and its value, even if determined by an expert, would not affect this court’s award of assets and liabilities, the award of maintenance, or the award of attorney’s fees, the court deems it unnecessary to place a value on this asset.” Findings of Fact and Conclusions of Law at 4 (June 24, 2010)(CP 98)

The Trial Court then made findings as to the separate property of the Wife and awarded the Wife her separate property placing values on those assets:

“The wife has real and personal separate property as set forth in Attachment W-SP which is incorporated as if set forth herein. Faith Smith has separate property including her Pensco/Scudder IRA account valued at \$167,000 and a house and car in the Philippines valued at \$167,000 (the amount she received as her separate property in the form of withdrawals from the equity line of credit on the Northridge, California home). This property should be awarded to Respondent Faith Smith.” Findings of Fact and Conclusions of Law at 4 (June 24, 2010)(CP 98)

Is the Wife objecting to this Finding? RAP 10.3 (g) requires the appellant to assign each finding of fact it contends is improper delineating each paragraph with a number. *See, e.g., In re Santore, 28 Wash. App. 319 (1981); Pederson, supra; Holland, supra; Escude, supra; Tanzymore, supra; Erdmann, supra.*

Section 2.10 of the Findings sets forth the award of community liabilities in Attachment CP. What if any disputes do the appellant-wife have with this finding? Unless the Wife specifies the error and provides argument and authority for its position, this broad assignment should be disregarded. This court should not review his assignment of errors relating to any of the findings and should treat them as verities. *See Thomas v. French, 99 Wash.2d 95, 99-101, 659 P.2d 1097, 1099 - 1100 (Wash.,1983)* (“To assure the rule accomplishes its intended purpose of improving and expediting appellate procedure, we must enforce it by requiring full compliance with its clear requirements. We previously have indicated severe measures may be imposed for the failure to so comply. ... Fair warning has been given, however, that this court expects full compliance with RAP 10.4(c) and the failure to do so may result in measures as severe as non-consideration of the claimed error.”). Section 2.11 awards each of the parties his or her separate liabilities.

Similarly, the appellant-wife assigned as error all of §3.4 of the Trial Court's conclusion of law. *Appellant's Brief* at 3. As to errors in law contained in §3.4 of the Conclusions of Law, those are too vague and appellant fails to delineate what part of the conclusions of law are at issue. *See King Aircraft Sales v. Lane*, 68 Wash.App 706 (1993).

**C. In the event that this court does review Appellant's Assignments of Error Nos. 1 &2, this court should affirm the award because there has been no manifest abuse of discretion in the trial court's award of the husband's separate property to him.**

**1. Standard of Review in the Review of the award of Property in Dissolutions is the trial court is affirmed unless a showing of a manifest abuse of discretion.**

Unless there is a manifest abuse of discretion, a trial court's division of marital property will not be reversed. *E.g. In re Marriage of Wright*, 78 Wash.App. 230, 234 (1995); The Trial Court has broad discretion in dividing property in a decree of dissolution and will be reversed only upon a showing of a manifest abuse of discretion. *Buchanan v. Buchanan*, 150 Wash.App. 730, 753 (2009). Any error or failure to value separate property is not reversible error where there is little or no community interest. *Wright, supra at 237*.

**2. Trial Court's award of the Robert and Meta Smith Family Limited Partnership to the husband without a lien to the wife is not an abuse of discretion.**

In this case, the Trial Court characterized the Husband's interest in the Robert and Meta Smith Family Limited Partnership as his separate property and at a value of the trial court did value the Husband's interest in the Smith Family Partnership at \$837,651. (CP 89-Attachment H-SP; RP Vol. III, p. 13) There was sufficient evidence as to said character based upon the extensive documentation of the history of the gifting to the Husband of said shares, e.g. PET EX 3 detailing the history, the other Exhibits (Pet EX 2-17). *See e.g., In re Marriage of Campbell*, 22 Wash.App. 560, 566 (1977). In addition, the Trial Court's ruling that the First Set of Request for admissions to the Wife would be deemed admitted form an independent basis for Trial Court's characterization. *See* Wife's admission as to his interest as set forth in Request for Admissions Nos. 1-5, and RFA 8: "Admit that you have no evidence that Ford Smith's interest in the Robert and Meta Smith Limited Partnership has any community character." Husband's Exhibits Nos. 18-31 are tax returns through 2009. The schedule in the tax return sets forth the income derived from the Husband's interest in the Smith Family Limited Partnership. There was sufficient evidence of the value placed on this partnership.

3. **Trial Court's Award of husband's half interest in the Sea Tac rental home as his separate property is not an abuse of discretion.**

The Husband's one half interest in the Sea Tac home was established in 1996 pursuant to the Robert G. Smith Qualified Personal Residence Trust before the parties married. (PET EX 56) and was transferred to his sister, Christy Strong and to him on August 14, 2008 pursuant to the terms of the trust (RP Vol. II at 42-44; PET EX 56-58), over a year after this action had commenced. There is no necessity to place a value on the Husband's separate asset where there is no evidence that the community has any interest. *Wright. at 237*. When the Husband testified, he had difficulty determining the market value of his half interest in the house because he and his sister agreed to rent the house to his father so long as he lives there. (RP Vol. II at 46) In effect, the father has a life estate in the house. For that reason, the Husband was unable to give an opinion on its market value. The court's findings of fact on this issue are well supported by the record. (RP Vol. II at 106 – 107)

The court would not admit the King County assessment for several reasons: First there was no evidence that it was a reliable source of a market valuation. Secondly, it included the actual motel which is owned by the Hilton Corporation (i.e., the improvements), he denied the request to admit as a discovery sanction for the Wife's last minute change in her answers to Interrogatories, her failure to identify that this was going to be introduced prior to trial in order to give the Husband's attorney sufficient

time to obtain an expert opinion as to value of the Husband's half interest and the failure of the Wife's attorney to ask any questions about the value of the SeaTac Property (RP Vol. III at 74). The Trial Court ruled them inadmissible as a discovery sanction because they were not produced until the start of the trial. The Trial Court's exclusion of this evidence was not appealed; therefore it is binding on this court. Thus, there was no admissible evidence provided to the court.

Appellant relies upon *Wold v. Wold*, 7 Wash.App. 872 (1972) to ask this court to reverse the trial court's division of assets and liabilities and the award of maintenance. *Wold* is unique in that the trial judge died after entry of the decree and the decree was devoid of **any** values on 15 community assets including various parcels of real estate including commercial property were valued by the parties. In *Wold*, the Trial Court gave tentative valuations on these community properties. In *Wold*, the Trial Court had made valuations on the community property, handed them to counsel at the time of his ruling but then never incorporated the valuations in the Findings of Fact or in the Decree and those values were not designated in the clerk's papers, but instead were set forth in counsel's appellate brief. The utter lack of any value on the community property made review problematic, especially where trial judge was deceased. Because the Findings and Decree did not set forth **any values, the Court**

**of Appeals remanded the matter for a new trial because the trial judge was dead. *Id.* at 874.**

In the present case, values were placed on all community property; the only asset not valued was not a community asset, but a separate asset. The Wife's counsel never asked to have said property appraised and no questions were asked about the market value of his one half interest in this home in Sea Tac Washington. It is well settled that an appellant may not complain about a lack of valuation when it did not submit any admissible evidence as to the property in question. *See, e.g., In re Marriage of Hadley*, 88 Wn.2d 649, 658 (1977) ("unsympathetic to the appellant's contentions . . . appellant offered no testimony regarding the fair market value of the buildings in question."); *accord, In re Marriage of Church*, 424 NE 2d 1078 (Indiana 1981) (wife estopped from appealing distribution on ground of lack of valuation when wife failed to provide evidence as to value to the trial court). The wife's tactics of trial by ambush should not be rewarded. Finally, since the wife has failed to preserve the issue as to the admissibility of the King County Assessments, then the court should not review this issue. RAP 10.3; *See State v. Dent*, 123 Wn.2d 467 (1994); *State v. Sunset Quarries, Inc.*, 66 Wn.2d 700 (1965). In *Wright, supra*, the appellate court affirmed the trial court even though it did not value every asset, even one with a community interest:

“The same can be said of the trial court's failure to characterize and value the retroactive pay that Kim was to receive from United Airlines. While the trial court should have placed a value on this asset, the error is not significant enough to warrant reversal and remand. The evidence showed that the community interest in the retroactive pay, if any, was very slight. As we have noted, the trial court is obligated only to make a fair, just and equitable division of the marital property. Even assuming the existence of this additional community asset, we cannot say that awarding Kim the retroactive pay rendered the division of property inequitable.” *Wright at 237* (emphasis added)

With respect to knowing the value of the Husband's half interest in the Sea Tac home for purposes of maintenance, although it was not valued, evidence was presented as to its income production. This rental property did not provide a positive cash flow to the Husband (i.e. is not income generating). The Sea Tac home is rental property rented to the husband's father indefinitely. The rental property suffers an annual loss (RP Vol. II at 44-46). The net loss is set forth in Schedule E of the husband's individual tax return in 2009 (Pet Ex 31). Since there was sufficient evidence as to the property's income generation, there was sufficient evidence as it relates to maintenance. The Trial Court so found and his finding shall not be disturbed except as a manifest abuse of discretion.

**D. Wife fails to show that the award of property to the wife is so inadequate as to be a manifest abuse of discretion.**

Wife fails to show with any kind of specificity the inadequacy of the trial court's award of property to the Wife and does not challenge the specific values placed upon the award to the Wife so "they become established facts in the case." *In re Marriage of Campbell*, 22 Wash.App. 560, 566 (1977). The Wife was awarded her Lexus RX 300, her tax refunds, various personal property, and received \$167,000 of community assets as a pre-distribution for the acquisition of her house and other property in Cebu, Philippines, has a lien on the Northridge property as specified in Attachment CP. She also was awarded her IRA worth valued at \$167,000 a gold coin collection valued at \$20,000, various jewelry and the Furniture and Furnishings at the Northridge home. In addition, the Wife was not charged for her exclusive use of the family home for the benefit of her and her adult sons who lived there rent free with their mother from August 2006 until August 2010.

**E. California Law applies to the character of the Northridge Home.**

Courts have the authority to adjudicate personal interests in real property located outside the state. *In the Matter of the Marriage of Kowalewski*, 163 Wn. 2d 542, 547 (2008). In *Rustad v Rustad*, 61 Wn 2d 176, 179, 377 P. 2d 414 (1963), our Supreme Court held that the character of property is determined under the law of the state in which the couple

were domiciled at the time of its acquisition. After the Husband paid off the mortgage in 1996, in 1998, the Wife transferred her separate property into joint property. Under *California Family Code § 2581*, property acquired during the marriage in joint form is presumptively community property, rebuttable by written agreement or other documentary evidence. This became community property. Under *California Family Code Section 2550*, the trial court is mandated to equally divide community property; *In re the Marriage of Cream* 13 Cal.App.4<sup>th</sup> 81 (1993) (except as otherwise specified by statute, the court has no authority to divide community estate other than equally). This court's award of a 50-50 division of the community property is consistent with California law. In addition, there is no showing that such an outcome is unjust under the laws of Washington State. Under RCW 26.09.080, the trial court is to consider all relevant factors. The trial court did. In its findings it found:

“In order to effectuate a fair and equitable division of the assets and liabilities of the parties, the community property should be divided equally.

Family Home. The parties have real community property; to wit, the Northridge California family home located at 18423 Tuba Street; Northridge, California and legally described as set forth in Attachment FH. The Family Home should be awarded to the husband Ford Smith, subject to a lien as set forth in Attachment D.” Findings of Fact at 3 (Pro Tem Judge Leon Henley, June 24, 2010)

As to the \$167,000 being treated as the Wife's separate debt, there is ample authority under Washington and California law. Under *Cal. Fam. Code* § 2625 "all separate debts, including those debts incurred by a spouse during marriage and before the date of separation **that were not incurred for the benefit of the community**, shall be confirmed without offset to the spouse who incurred the debt." In this case, the Wife borrowed said sum for her own benefit and for the benefit of her own children without the consent of the husband. Under Washington law, when a spouse incurs a debt not for the benefit of the community, it is his or her separate debt and is to be treated as a pre-distribution of community property. See, *In re the Marriage of Schweitzer*, 132 Wn.2d 318, 330-1 (1997) (gifts to the other spouse's stepchildren will be chargeable to the giver even if they are a loan).

The Husband contended that the Wife should also be charged with the rental value of the exclusive use of the Northridge California home for her and her adult children. By the Wife's testimony, the rental value of the Northridge home was \$6,700 per month. The Trial Court, in its discretion, declined to grant this charge against the Wife. The Trial Court also did not charge the Wife with the \$48,000 in financial support he gave her after maintenance was terminated: If he would have, the Wife would

have owed the Husband \$53,500 plus \$48,000 in financial support after termination of temporary maintenance:

“The Court declines to adopt Ford Smith’s proposals (1) that the rental value credits for Faith Smith’s exclusive use of the parties’ Northridge California home, valued at \$6700 per month from January 2009 to the present, a total of \$107,200, should be awarded to the community and Ford Smith received ½ that amount or \$53,600 and (2) that Ford Smith be awarded a setoff of \$48,004 against Faith Smith’s lien for her ½ community interest in the net proceeds from the sale of the parties’ Northridge, California home for payments made by Ford Smith for that house and cars after Faith Smith’s temporary spousal maintenance was terminated.”  
*Findings of Fact, supra* at 3, ll. 11-17.

These specific findings of fact have not been challenged so this court should treat them as established facts. *Campbell, supra*.

Section 2.9.1 of the court’s findings of fact was not assigned as error. Those findings were in response to the Wife’s motion to reopen the testimony. Therefore, they are an established fact. *Id*.

They read as follows:

“The respondent has sought to reopen testimony on, among other things, the value of Petitioner’s ½ interest in the Sea Tac Home. The SeaTac home was formerly owned by Petitioner’s father, Robert Smith. For estate tax planning purposes, it was transferred into a Qualified Personal Residence Trust in 1996. The father has been a resident in this home during the trust. After the trust terminated, the property was not transferred to the children until 2008. The property was transferred to Robert Smith’s children equally, to wit, to Christy Strong and Ford Smith.

Petitioner’s deposition was on August 4, 2009. Her attorney did not ask Ford Smith for a valuation of the SeaTac home. Respondent’s attorney did not request an appraisal from the

husband nor did she employ an appraiser at any time prior to trial. The respondent has not provided any grounds for her neglecting to value this asset or asking Petitioner to do so raising this lack of value only post-trial. Since this is the husband's separate asset and its value, even if determined by an expert, would not affect this court's award of assets and liabilities, the award of maintenance, or the award of attorney's fees, the court deems it unnecessary to place a value on this asset." Findings of Fact §2.9.1 at 3-4

The findings of fact as to the value of the Wife's separate property were not challenged; therefore, this court should treat them as established fact.

Id. They read as follows:

"The wife has real and personal separate property as set forth in Attachment W-SP which is incorporated as if set forth herein. Faith Smith has separate property including her Pensco/Scudder IRA account valued at \$167,000 and a house and car in the Philippines valued at \$167,000 (the amount she received as her separate property in the form of withdrawals from the equity line of credit on the Northridge, California home). This property should be awarded to Respondent Faith Smith." Findings of Fact §2.9.1 at 4

Furthermore, there is substantial evidence to support all of these findings. Findings will be affirmed unless there isn't any evidence to support the findings. *State v. Halstien*, 122 Wn.2d 109, 128-129 (1993). In this case, there was substantial evidence to support each of the findings as well as the Admissions under the RFA Nos. 13-16 (CP 116).

As to liabilities awarded to the Wife, when the Wife left in August 2006, the Husband had paid all of those debts. (RP Vol. III at 83\_; PET EX 88 and 89 - Capital One Credit Card Statements). The Decree of

Dissolution, Attachment CP states: "Husband paid all of Wife's Credit card debt at time of separation." (CP 84) The Wife has not challenged this finding. Therefore, it is established fact. *Campbell, supra*. There is substantial evidence established at trial. (RP Vol. III at 83; PET EX 88 and 89) The Husband continued to pay for the Wife's expenses, including monthly amounts for her credit cards even after separation. Thus, all of the debts awarded to the Wife represent post separation debts and are the separate debt of the Wife and should be awarded to the party incurring same.

1. **Discovery Sanctions against Wife for failing to timely disclose its valuation were not an abuse of discretion.**

More than 3 years ago, in Petitioner's First Set of Interrogatories, the Husband asked for all appraisals of any real estate of the marital estate. The Wife's attorney took the deposition of the husband but failed to ask him about the valuations of the interest he had in the Sea Tac properties. A motion to compel was made when she failed to provide answers and produce documents. (CP 715-171 - Order on Motion for Discovery) It was not until the 3<sup>rd</sup> day of trial that the Wife produced any documents to Husband's counsel concerning the value of the Sea Tac home and the Family Limited Partnership. As a discovery sanction, the Trial Court rejected respondent's untimely submission of valuations. (RP

Vol. III., p. 74 and RP Vol. IV., p. 91) and Findings of Fact §2.9 quoted above.

**2. Exhibits 87 and 99 were properly rejected as discovery sanctions.**

The Wife made the tactical decision to wait until the third day of trial to show Husband's counsel the King County Real Estate Assessments **in order to try to obtain an award of \$4,000,000 cash.** The Wife waited in the bushes seeking to admit grossly overvalued assessments that related to the totality of the improvements on the Doubletree Inn's motel complex which is owned by Hilton. The Family Limited Partnership had entered into a 70 year ground lease with DoubleTree. This had transferred beneficial ownership to the Double Tree Inn of the property. All the Trust had by way of an asset was a ground lease which had a steady stream of income that was set forth in the financial statement and in the tax returns of Ford Smith (PET EXS:18-31) Mr. Porter tried to ambush the Husband. Such tactics have been abolished in Washington State by the discovery the Discovery rules (CR 23-36). The Wife submitted this surprise assessment on the third day of trial because she wanted to win the proverbial lottery: she demanded \$4,000,000 in cash from the Husband based upon these nonsensical assessments even though neither party had any cash or liquid investments. If she prevailed, he would have to turn

over everything to her and then be indebted to her for the rest of his life. He would have no way to meet his living expenses.

3. The trial court did admit value on the Family Law Partnership (RP Vol. III, p. 13) at \$837,500 as the current value of the Husband's interest in the Family Law Partnership.

**F. Maintenance Award will not be reversed absent an abuse of discretion.**

Washington appellate courts give broad discretion to the trial court to award maintenance and appellate courts will not reverse a trial court's award of maintenance unless there is a serious abuse of discretion. *In re Drlik*, 121 Wash.App. 269, 274 (2004); accord, *In re Marriage of Spreen*, 107 Wash. App. 341, 346 (2001). Abuse of discretion occurs only when the trial court's decision is manifestly unreasonable or clearly untenable. *In re Marriage of Ochsner*, 47 Wash.App 520 (1987)

Any unchallenged findings are deemed as established fact. *Campbell, supra*. No specific challenges to Finding of Facts Section 2.12 were made. In Section 2.12 of the Findings of Fact, the Trial Court made a finding that the Husband:

“has paid about \$48,000 since temporary maintenance was terminated. However, awarding Faith Smith the requested \$6000 in permanent, monthly, post dissolution spousal maintenance would be an unwarranted lien on Ford Smith's separate property.

The court finds that a limited amount of maintenance for a definite period in light of that already provided by the husband is appropriate in this case so that Faith Smith can transition to her admitted stated desire of living in Cebu, Philippines where she has a house and the cost of living is substantially lower. Therefore, the Court finds that Faith Smith should be awarded and Ford Smith should pay spousal maintenance to her in the amount of \$3000 a month for two years starting the first day of the month after the decree of dissolution is entered” Findings of Fact, *supra* at 5-6

Since those specific findings are unchallenged, it is an established fact. *Campbell, supra* at 566. An award of 2 years of maintenance at \$3,000 per month in light of this finding is not an abuse of discretion. Furthermore, there is sufficient evidence of the financial support the Husband has paid to the Wife since she moved back to Northridge, California in August 2006 which included financial support of \$3,500 per month in temporary maintenance, \$48,000 in voluntary support and the rental value of the Northridge home. Finally, there is sufficient evidence that she plans to move to Cebu, Philippines and live in her home where the cost of living is substantially lower. Those include RFA #11, RFA #33 and PET EX 98, as well as the Loan Agreement (PET EX 40). There is no showing that she wouldn't meet her financial needs in Cebu, Philippines based upon her social security, Medicare and the assets awarded to her once maintenance is terminated. The burden of proof is on the one seeking maintenance and it has not been established, except as a transition

to Cebu, Philippines. The Wife has failed to cite any authority for the proposition that maintenance must be longer than 6 years since the time that parties separated. Because of the Wife's failure to provide an accounting for sums she received, there was an inadequate showing of her financial needs, as opposed to adult children and her grandson.

**G. The Trial Court should have adopted the Husband's proposed findings of fact §2.15 and awarded attorney's fees against the Wife as a sanction for failing to provide discovery as ordered by the court; for failing to admit or deny the truth of the matters or the genuineness of documents requested by Husband requiring him to incur expenses in making those proof; for failing to engage in settlement negotiations and mediation in good faith; and her failure to comply with court rules for introduction of evidence.**

**1. Request for Order for Wife to Pay Reasonable Expenses for Husband to Prove Truth of Admissions Objected to by Wife should have been awarded to Husband.**

On April 21, 2010, the Trial Court granted the Husband's motion as to the entire First Set of Request for Admissions (Nos. 1-22) and granted the motion to admit as to Numbers 23, 24 and 33 of the Second Set of Requests for Admission. (CP 107 - Order on Petitioner's Motion in Limine) With respect to the Petitioner's Request for the Wife to Admit that the Husband's interest in the Family Limited Partnership is his separate property, RFA No. 23, the court granted Husband's motion because the Wife's objection was improper. In addition, the Wife,

admitted by failing to deny that this asset was entirely the Husband's separate property by admitting the First Set of Request for Admissions ("1RFA ") that the Husband acquired this interest prior to the Wife meeting the Husband (1RFA #1), that any increase in value is based upon the ground lease, (1RFA #4) if any, and she had no evidence that his interest had a community character (1RFA #8).

The Husband requests that the court order that the Wife pay him the expenses he incurred in securing proof as to those Requests for Admissions she failed to admit.

CR 37(c) states in pertinent part:

If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney fees.

Specifically, Husband sought the Trial Court for an award against Wife for his costs incurred in proving the requests that the Wife failed to admit, including that her sons are in fact living at the Northridge house (RFA Nos. 28-29); that the parties are on title as joint owners of the Northridge

property (RFA No.24); that the Wife's current health does not prevent her from obtaining employment (RFA No. 27); that the cost of living in Cebu City is as accurately reflected in the attached sample budget (RFA No. 33); or as to the rent of the property in Cebu City (RFA Nos. 34-35). *See Clausing v. Kassner*, 60 Wn.2d 12 (1962)(approval of attorney's fee award where no credible evidence or law to deny the admission)

**2. Trial Court erred in not awarding Husband his attorney fees in light of Wife's egregious behavior during trial and obstructionist litigation tactics.**

It is well established that fees based on intransigence of one party "have been granted when the party engaged in 'foot-dragging' and 'obstruction' ... or simply when one party ... increased legal costs by his or her actions...." *In re Marriage of Greenlee*, 65 Wash.App. 703, 708, 829 P.2d 1120 (1992) (emphasis added); *accord, State ex rel. Stout v. Stout*, 89 Wash.App.118, 948 P.2d 851 (1997) (trial court's ruling remanded on attorney fees where intransigence established by party's failure to cooperate, causing the requesting party to incur needless attorney fees).

The Husband should have been granted attorney fees against the Wife for violating the Temporary Order and for failing to provide full answers to the Interrogatories and Request for Production of Documents.

The Wife delayed almost a year in providing any information or documents to support an accounting of the line of credit and her responses have incomplete or misleading (e.g. failing to disclose the real estate holdings in the Pensco IRA, attempting to portray that her Scudder IRA has decreased in value to a mere \$747).

These questionable tactics have caused the Husband to incur undue costs and expense by necessitating court intervention to secure her compliance with court orders, including the Decree of Dissolution. The Wife's failure to comply with the court rules and cooperate in discovery procedure forced Husband to incur unnecessary attorney fees to obtain Wife's compliance and take excessive measures to gather information sufficient to prepare for trial. In addition to failing to cooperate or comply with the court's orders, Wife had the audacity to attempt to produce new discovery responses on the eve of trial, sought to admit evidence at trial that was not previously disclosed, and sought to admit evidence that was previously ruled as non-admissible during the trial. "A spirit of cooperation and forthrightness during the discovery process is mandatory for the efficient functioning of modern trials. Rule 37 is the enforcement section for the discovery process. It authorizes sanctions to be imposed on a party or its attorney for (1) failure to comply with a discovery order or (2) failure to respond to a discovery request or to appear for a deposition.

Sanctions are permitted for unjustified or unexplained resistance to discovery and serve the purposes of deterring, punishing, compensating, and educating a party or its attorney for engaging in discovery abuses.” *Johnson v. Jones*, 91 Wash.App. 127, 132-133, (Div. I 1998); *accord Eide v. Eide*, 1 Wash.App. 440 (1969) (husband's recalcitrant, foot-dragging, obstructionist attitude increased the cost of litigation to wife).

**H. Husband should be awarded his attorney fees on appeal.**

Husband requests that the court award him his attorney fees in this appeal, as authorized under RCW 26.09.140, which provides that “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.” *See*, RAP 18.1. RAP 18.9 provides that on appeal, a party may be ordered to pay terms for who uses the appeals process for purposes of delay, files a frivolous appeal or fails to comply with the appellate rules to the party harmed. *See, Johnson, supra* at 136-37. Here, Wife is attempting to bring arguments before the court that have been waived for failure to provide notice of appeal (e.g., Order on Motions in Limine re Requests for Admissions), identify with specificity the assignment of error in her Notice of Appeal or Appellant’s Brief, or comply with the Trial Court’s orders or seek a stay of the Trial Court’s order pending appeal (e.g., Order on Show Cause re Contempt).

## V. CONCLUSION

This court should affirm the Trial Court's award of property and liability because there was no manifest abuse of discretion. The Wife seeks to take advantage of its failure to appraise the home that the Husband and his sister rent to his father. Even though neither current counsel for the Wife, nor any of her three prior counsels asked the Husband to retain an expert to do so or even asked about the value, current counsel seeks to use this to reopen the case. In effect, the Wife wants two bites at the apple. The trial court, in its findings, made clear that the value of this property would not affect its division of assets and liabilities and its award of maintenance. Based upon the admissible evidence before it, the Trial Court valued all the property that had been valued.

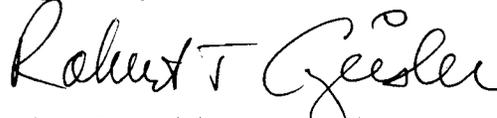
The Wife, at the time the petition was filed had no debt. The Husband paid for all of her normal living expenses during the pendency of this action, even after temporary maintenance was terminated. Not only the trial court, but also all of the commissioners denied the Wife's request for the husband to pay these credit card debts and to pay her sister for her "loan". To modify these orders is a collateral attack on these orders that were not revised or appealed.

With respect to maintenance, in light of the short duration of the marriage, the lengthy period of financial support already provided to the

Wife, and the substantially lower cost of living in Cebu, Philippines, the court's award of maintenance was not a manifest abuse of discretion.

The Wife's litigiousness, her flagrant disregard for court orders, including the order to vacate the Northridge property by July 1, 2010 has been the cause of the amount of attorney's fees incurred by the Husband. The Wife should be sanctioned for her bad faith negotiations, her disregard for discovery rules and the lack of good faith in her demands (e.g. \$4,000,000 in cash). Therefore, the court should reverse the denial of attorney's fees against the Wife and award attorney's fees against the wife for having to defend this appeal which is without merit..

Respectfully, Submitted,

A handwritten signature in black ink that reads "Robert T. Czeisler". The signature is written in a cursive style with a large, prominent "R" and "C".

Robert T. Czeisler WSBA # 2092  
Attorney for Ford Smith

SCANNED 27

FILED IN OPEN COURT  
6-24-2010  
WHATCOM COUNTY CLERK

By [Signature]  
Deputy

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF WHATCOM

In re the Marriage of:

FORD B. SMITH

and

FAITH L. SMITH (a.k.a. TAN)

Petitioner,

Respondent.

NO. 07-3-00280-4

ORDER ON PETITIONER'S  
MOTION IN LIMINE FOR ORDER  
ADMITTING TRUTH OF FIRST SET  
OF REQUESTS FOR ADMISSIONS  
AND DETERMINATION OF  
SUFFICIENCY OF ANSWERS AND  
OBJECTIONS OF SECOND SET OF  
REQUESTS FOR ADMISSIONS

I. BASIS

This matter came before the Court on Petitioner's motion in limine for order admitting truth of Petitioner's First Set of Requests for Admissions and determination of sufficiency of answers and objections of Second Set of Requests for Admissions. The motion was made in open court, and is supported by Petitioner's written motion and declaration of Robert T. Czeisler.

The court, after considering all materials provided the parties and oral argument of the parties, makes the following FINDINGS:

ORDER ON PETITIONER'S MOTION IN LIMINE RE FIRST  
AND SECOND SETS OF REQUESTS FOR ADMISSIONS -  
Page 1 of 4

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DAVIDSON, CZEISLER &  
KILPATRICK, P.S.  
520 Kirkland Way, Ste. 400  
P. O. Box 817  
Kirkland, Washington 98083-0817  
(425) 822-2228  
Fax: (425) 827-8725

ORIGINAL

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1  
2 1. Petitioner's First Set of Requests for Admissions was served on October 19, 2009  
3 (attached hereto as **Exhibit 1**). Respondent failed to serve a response and no adequate grounds  
4 for denial were presented.

5 2. Petitioner's Second Set of Requests for Admissions was served on March 3, 2010  
6 (attached hereto as **Exhibit 2**). Respondent served a response on March 30, 2010.

7 a. All of the documents attached to and referenced within the Second Set of  
8 Requests for Admission are admissible.

9 b. Petitioner's motion to admit the truth of the following requests are denied:

10 (1) Request No. 25

11 (2) Request No. 26

12 (3) Request No. 27

13 (4) Request No. 28

14 (5) Request No. 29

15 (6) Request No. 32

16 (7) Request No. 34

17 c. Petitioner's motion to admit the truth of the following requests are granted:

18 (1) Request No. 23

19 (2) Request No. 24

20 (3) Request No. 33

## 21 II. ORDER

22 Based on the foregoing findings and for good cause shown, IT IS THEREFORE ORDERED as  
23 follows:

1. The Petitioner's motion to admit the genuineness and truth of the matters set out in  
Petitioner's First Set of Requests for Admissions for purposes of trial in this dissolution matter  
**ORDER ON PETITIONER'S MOTION IN LIMINE RE FIRST  
AND SECOND SETS OF REQUESTS FOR ADMISSIONS -**  
Page 2 of 4

1  
2 (attached hereto as *Exhibit 1*) is granted and the genuineness and truth of the matters set out  
3 in the requests are admitted;

4 2. The Petitioner's motion to admit the genuineness and truth of the matters set out in  
5 the following requests of Petitioner's Second Set of Requests for Admissions for purposes of trial in  
6 this dissolution matter (attached hereto as *Exhibit 2*) is denied:

7 Request No. 25

8 Request No. 26

9 Request No. 27

10 Request No. 28

11 Request No. 29

12 Request No. 32

13 Request No. 34

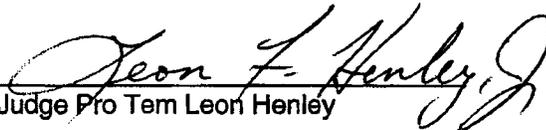
14 3. The Petitioner's motion to admit the genuineness and truth of the matters set out in  
15 the following requests of Petitioner's Second Set of Requests for Admissions for purposes of trial in  
16 this dissolution matter (attached hereto as *Exhibit 2*) is granted and the genuineness and truth  
17 of the matters are admitted:

18 Request No. 23

19 Request No. 24

20 Request No. 33

21 DONE IN OPEN COURT this 24 day of June, 2010.

22   
23 Judge Pro Tem Leon Henley

ORDER ON PETITIONER'S MOTION IN LIMINE RE FIRST  
AND SECOND SETS OF REQUESTS FOR ADMISSIONS -  
Page 3 of 4

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520 Kirkland Way, Ste. 400  
P. O. Box 817  
Kirkland, Washington 98083-0817  
(425) 822-2228  
Fax: (425) 827-8725

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Presented by:

DAVIDSON, CZEISLER & KILPATRIC, P.S.

By: Robert T. Czeisler  
Robert T. Czeisler, WSBA #2092  
Attorney for Petitioner

Copy received:

By: David Porter  
David Porter, WSBA #17925  
Attorney for Respondent

ORDER ON PETITIONER'S MOTION IN LIMINE RE FIRST  
AND SECOND SETS OF REQUESTS FOR ADMISSIONS -  
Page 4 of 4

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Kirkland, Washington 98083-0817  
(425) 822-2228  
Fax: (425) 827-8725

**EXHIBIT 1**

RECEIVED

OCT 20 2009

TARIO & ASSOCIATES

SUPERIOR COURT OF WASHINGTON  
COUNTY OF WHATCOM

In re the Marriage of:

FORD B. SMITH

No. 07-3-00280-4

Petitioner,

PETITIONER'S FIRST SET OF  
REQUESTS FOR ADMISSION TO  
RESPONDENT

and

FAITH L. SMITH (a.k.a. TAN)

Respondent.

TO: FAITH L. SMITH, Respondent

AND TO: CHRISTINA E. KING, her attorney

The Respondent requests that the Petitioner admit the genuineness and truth of the matters set out below within thirty (30) days after the service of this request. In accordance with Civil Rule 36(a), each matter is admitted unless a response is received within thirty (30) days after service.

Instructions

1. Scope of Discovery (Location and Custody of Documents and Information). These requests for admission to the Petitioner cover all information in her possession, custody and control, including information in the possession of his, employees, agents, servants, representatives, attorneys, or other persons directly or indirectly employed or retained by

RESPONDENT'S FIRST REQUEST FOR ADMISSIONS

Page 1 of 8

DAVIDSON, CZEISLER &  
KILPATRICK, P.S.

520 Kirkland Way, Ste. 400  
P. O. Box 817

Kirkland, Washington 98083-0817

(425) 822-2228

Fax: (425) 827-8725

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Exhibit 1 COPY

1  
2 his, or anyone else acting on her behalf or otherwise subject to his control.

3 2. Cannot Admit or Deny. If a request for admission can neither be admitted nor  
4 denied, the answer shall specifically set forth in detail the reasons why the matter cannot  
5 truthfully be admitted or denied. Lack of information or knowledge is not a basis for failure  
6 to admit or deny unless you state that you have made reasonable inquiry, and the  
7 information known or readily obtainable is insufficient. Civil Rule 36(a).

8 3. Failure to Admit. If you fail to admit the truth of any request, and the Respondent  
9 thereafter proves the truth of the matter, the Respondent may apply to the court for an  
10 order requiring you to pay the Respondent's reasonable expenses incurred in making the  
11 proof. Civil Rule 37(c).

12 4. Grounds for Denial. If you deny the truth of any request, you must set forth the  
13 specific grounds and detail the evidence to support such denial. A general denial is  
14 insufficient. In particular, you need to provide documents, check registers, bank  
15 statements, cancelled checks, credit cards or other documents that form the basis for your  
16 denial.

17 REQUESTS FOR ADMISSION

18  
19 REQUEST FOR ADMISSION NO. 1. Admit that Ford Smith obtained his interest in Robert  
and Meta Smith Limited Partnership before you met him.

20 RESPONSE:  
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2 REQUEST FOR ADMISSION NO. 2. Admit that Ford Smith was a limited partner in the  
3 Robert and Meta Smith Limited Partnership.

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7 RESPONSE:

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10 REQUEST FOR ADMISSION NO. 3. Admit that the only asset of the Robert and Meta  
11 Smith Limited Partnership is a parcel of land located at SeaTac that has a long term  
12 ground lease ("SeaTac Land").

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16 RESPONSE:

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19 REQUEST FOR ADMISSION NO. 4. Admit that any increase in the value of the land is  
20 based upon the terms of the ground lease.

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23 RESPONSE:

REQUEST FOR ADMISSION NO 5. Admit that Ford Smith's labor to Robert and Meta  
Smith Limited Partnership was limited to collecting the monthly ground lease checks from  
the tenants of the SeaTac Land.

RESPONSE:

REQUEST FOR ADMISSION NO. 6. Admit that Ford Smith used the monthly checks  
from Robert and Meta Smith Limited Partnership to pay for your expenses and the  
community's daily living expenses.

RESPONSE:

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2 REQUEST FOR ADMISSION NO. 7. Admit that Ford Smith also used the monthly  
3 distribution from Robert and Meta Smith Limited Partnership to pay for repairs and  
4 improvements on the Northridge property.

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8 RESPONSE:

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10 REQUEST FOR ADMISSION NO. 8. Admit that you have no evidence that Ford Smith's  
11 interest in the Robert and Meta Smith Limited Partnership has any community character.

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15 RESPONSE:

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17 REQUEST FOR ADMISSION NO. 9. Admit that you transferred your SCUDDER IRA to  
18 Pensco IRA and purchased real property in Antelope Valley, California with those funds.

19  
20  
21  
22 RESPONSE:

23 REQUEST FOR ADMISSION NO. 10. Admit that you plan to return to the Philippines  
and live in the residence that you had built.

RESPONSE:

REQUEST FOR ADMISSTION NO. 11. Admit that the living expenses in Cebu,  
Philippines are significantly lower than those in Northridge, California.

RESPONSE:

REQUEST FOR ADMISSION NO. 12. Admit that you failed to produce bank statements  
evidencing deposit of \$167,000 into any bank account after withdrawal of said monies  
from the Washington Mutual Equity Line of Credit on the Northridge property.

RESPONSE:

1  
2 REQUEST FOR ADMISSION NO. 13. Admit that on or about December 13, 1996, Ford  
3 Smith paid off the entire balance of the mortgage on the property known as 18423 Tuba  
4 St., Northridge, California 91325 ("Northridge property").

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8 RESPONSE:

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10 REQUEST FOR ADMISSION NO. 14. Admit that Ford Smith's payment to the mortgage  
11 company was in the amount of \$189,145.

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15 RESPONSE:

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17 REQUEST FOR ADMISSION NO. 15. Admit that Ford Smith used his separate funds to  
18 pay off the mortgage on the Northridge Property.

19  
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22 RESPONSE:

23  
REQUEST FOR ADMISSION NO. 16. Admit that after Ford Smith paid off the mortgage  
you caused title to the Northridge Property to be transferred to the community of Ford and  
Faith Smith.

RESPONSE:

REQUEST FOR ADMISSION NO. 17. Admit that during the marriage Ford Smith paid  
for all expenses arising out of the Northridge property with the distributions he received  
from the Robert and Meta Smith Limited Partnership.

RESPONSE:

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2 REQUEST FOR ADMISSION NO. 18: Admit that you borrowed \$167,000 from the  
3 community for the stated reason of purchasing your own separate property in Cebu,  
4 Philippines.

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8 RESPONSE:

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11 REQUEST FOR ADMISSION NO. 19. Admit that you promised to pay back the  
12 community when the Northridge Property sold.

13 RESPONSE:

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15 REQUEST FOR ADMISSION NO. 20. Admit that you got Ford Smith to agree to  
16 establish a line of credit on the Northridge Property by promising to pay back the  
17 community from the sale of the Northridge Property.

18 RESPONSE:

19  
20 REQUEST FOR ADMISSION NO. 21. Admit that you used the withdrawals from the line  
21 of credit to buy land in Cebu, Philippines, build a house, and buy a car.

22 RESPONSE:

23  
REQUEST FOR ADMISSION NO. 22. Admit that you used the proceeds you withdrew  
from the line of credit on the Northridge property to give gifts to your sons, grandchild and  
daughter-in-law without the consent of Ford Smith.

RESPONSE:

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2  
3 DATED: October 19, 2009  
4

5 Davidson, Czeisler, & Kilpatric, P.S.

6  
7 By Robert T. Czeisler  
8 ROBERT T. CZEISLER, WSBA #2092  
9 Attorney for Petitioner  
10

11 ATTORNEY CERTIFICATION

12 The undersigned is the attorney of record and certifies that these responses are  
13 made after the attorney has made a reasonable inquiry and exercises due diligence to  
14 obtain all information and documents requested and that the responses are to the best  
of her or his knowledge true, accurate, and complete information, and the objections are  
warranted by existing law and not interposed for any improper reason.

15 ANSWERS to these Requests for Admission submitted this \_\_\_\_\_ day of  
16 \_\_\_\_\_, 2009.

17 \_\_\_\_\_  
18 Christina King WSBA #  
19 Attorney for Respondent  
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DATED: October 19 2009

Davidson, Czeisler, & Kilpatric, P.S.

By Robert T. Czeisler  
ROBERT T. CZEISLER, WSBA #2092  
Attorney for Petitioner

ATTORNEY CERTIFICATION

The undersigned is the attorney of record and certifies that these responses are made after the attorney has made a reasonable inquiry and exercises due diligence to obtain all information and documents requested and that the responses are to the best of her or his knowledge true, accurate, and complete information, and the objections are warranted by existing law and not interposed for any improper reason.

ANSWERS to these Requests for Admission submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Christina King WSBA #  
Attorney for Respondent

**EXHIBIT 2**

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF WHATCOM

In re the Marriage of:

FORD B. SMITH

Petitioner,

and

FAITH L. SMITH (a.k.a. TAN)

Respondent.

No. 07-3-00280-4

PETITIONER'S SECOND SET  
OF REQUESTS FOR  
ADMISSION TO RESPONDENT

TO: FAITH L. SMITH, Respondent  
AND TO: David G. Porter, her attorney

The Petitioner requests that the Respondent admits the genuineness and truth of the matters set out below within thirty (30) days after the service of this request. In accordance with Civil Rule 36(a), each matter is admitted unless a response is received within thirty (30) days after service.

Instructions

1. Scope of Discovery (Location and Custody of Documents and Information). These requests for admission to the Respondent cover all information in her possession, custody and control, including information in the possession of his, employees, agents, servants, representatives, attorneys, or other persons directly or indirectly employed or retained by his, or anyone else acting on her behalf or otherwise subject to his control.

1  
2 2. Cannot Admit or Deny. If a request for admission can neither be admitted nor  
3 denied, the answer shall specifically set forth in detail the reasons why the matter cannot  
4 truthfully be admitted or denied. Lack of information or knowledge is not a basis for failure  
5 to admit or deny unless you state that you have made reasonable inquiry and the  
6 information known or readily obtainable is insufficient. Civil Rule 36(a).

7 3. Failure to Admit. If you fail to admit the truth of any request, and the Petitioner  
8 thereafter proves the truth of the matter, the Petitioner may apply to the court for an order  
9 requiring you to pay the Petitioner's reasonable expenses incurred in making the proof.  
10 Civil Rule 37(c).

11 4. Grounds for Denial. If you deny the truth of any request, you must set forth the  
12 specific grounds and detail the evidence to support such denial. A general denial is  
13 insufficient.

#### 14 REQUESTS FOR ADMISSION

15 REQUEST FOR ADMISSION NO. 23. Admit that Ford Smith's interest in Robert and Meta  
16 Smith Partnership is his separate property.

17 RESPONSE: Objection. Request calls for a legal conclusion  
18 and is therefore denied.

19  
20 REQUEST FOR ADMISSION NO. 24: Admit that you and Ford Smith are on title as joint  
21 owners of the house located at 18423 Tuba Street, Northridge, CA 91325.

22 RESPONSE: Denied. I do not recall. I can only recall  
23 Ford Smith repeatedly told me he gave me part or his part  
of Northridge house. We made verbal and written agreement  
on March 8, 1999. and that if I die the Northridge house  
belongs to Keith and Kent Tan.

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REQUEST FOR ADMISSION NO. 25. Admit that the house located at 18423 Tuba Street, Northridge, CA 91325 (hereinafter "Northridge") is a community asset.

RESPONSE: Objection. Request calls for a legal conclusion and is therefor denied.

REQUEST FOR ADMISSION NO. 26. Admit that the \$167,000 line of credit secured by the Northridge property is your separate debt.

RESPONSE: Objection. Request calls for a legal conclusion and is therefore denied.

REQUEST FOR ADMISSION NO. 27. Admit that your current health does not prevent you from obtaining employment.

RESPONSE: Denied. I have issues with cancer, heart disease, irritable bowel movement, back pain, arthritis, leg syndrome, etc.

REQUEST FOR ADMISSION NO. 28. Admit that your son, Keith Tan, has been living in the house located at 18423 Tuba Street, Northridge, CA 91325 since at least September 2006.

RESPONSE: Denied. My son Keith comes and goes from my home as he and I agree.

REQUEST FOR ADMISSION NO. 29. Admit that your son, Kent Tan, has been living in the house located at 18423 Tuba Street, Northridge, CA 91325 since at least September 2006.

RESPONSE: Denied. My son Kent comes and goes from my home as he and I agree.



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REQUEST FOR ADMISSION NO. 30. Admit that you have been allowing Kent Tan and/or his child to live in the house located at 18423 Tuba Street, Northridge, CA 91325 without paying rent.

RESPONSE: Admit. I do not charge my family members rent when they are visiting with me.

REQUEST FOR ADMISSION NO. 31. Admit that you have been allowing Keith Tan and/or his child to live in the house located at 18423 Tuba Street, Northridge, CA 91325 without paying rent.

RESPONSE: Admit. I do not charge my family members rent when they are visiting with me.

REQUEST FOR ADMISSION NO. 32. Admit that the attached quitclaim deed dated August 14, 2008 (recorded on August 18, 2008) as Exhibit 1 is a conveyance of interest in the house located at 3056 South 188<sup>th</sup>, SeaTac, Washington, to Ford Smith as his separate property.

RESPONSE: Objection. Request calls for a legal conclusion and is therefor denied.

REQUEST FOR ADMISSION NO. 33. Admit that the Sample Budget (Cost of Living) for Cebu City, attached as Exhibit 2, is an accurate reflection of the cost of living in Cebu City, with the exception of "house rent."

RESPONSE: Denied. It is not accurate. It is too low.

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REQUEST FOR ADMISSION NO. 34. Admit that the fair rental value of the house that you built at Pacific-Grand Villa, Cebu, Philippines is PHP 45,000 (currency in Philippine Peso).

RESPONSE: Denied. There is no legal approval for Occupancy Permit issued because the house that I built at Pacific-Grand Villa, Cebu, Philippine is not finished yet.

REQUEST FOR ADMISSION NO. 35. Admit that you have rented the house that you built at Pacific-Grand Villa, Cebu, Philippines.

RESPONSE: Deny. Denied.

DATED: March 2, 2010

Davidson, Czeisler, & Kilpatric, P.S.

By: Robert T. Czeisler  
ROBERT T. CZEISLER, WSBA #2092.  
Attorney for Petitioner

ATTORNEY CERTIFICATION

The undersigned is the attorney of record and certifies that these responses are made after the attorney has made a reasonable inquiry and exercises due diligence to obtain all information and documents requested and that the responses are to the best of her or his knowledge true, accurate, and complete information, and the objections are warranted by existing law and not interposed for any improper reason.

ANSWERS to these Requests for Admission submitted this 2<sup>nd</sup> day of March, 2010.

David Porter  
David Porter, WSBA #17925  
Attorney for Respondent

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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

FAITH SMITH, being first duly sworn on oath, deposes and states:

That I am the Respondent herein and have read the foregoing Requests for Admission thereto, know the contents thereof and believe the same to be true, accurate and complete and have submitted all the documents in my control or in my possession that have been requested by the Petitioner.

Dated March 29, 2010

*Faith Smith*

Faith Smith

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_



After Recording Return To:

Christy Strong & Ford Smith  
5302 Lake Washington Blvd. NE, Unit I  
Kirkland, WA 98033



20080818000323

MCQUAN QCD 43.00  
PAGE-001 OF 002  
08/18/2008 10:49  
KING COUNTY, WA

E2359549

08/18/2008 10:49  
KING COUNTY, WA  
TAX SALE \$10.00 \$0.00

PAGE-001 OF 001

QUIT CLAIM DEED  
OF TRUSTEE

The Grantor, ROBERT G. SMITH, TRUSTEE OF THE ROBERT G. SMITH QUALIFIED PERSONAL RESIDENCE TRUST OF 1996, for valuable consideration, conveys and quit claims to Grantees, CHRISTY SMITH STRONG, as her separate property, and FORD B. SMITH, as his separate property, each, as to an undivided one-half (1/2) interest in the following described real estate, situated in the County of King, State of Washington:

That portion of the northeast quarter of the southeast quarter of Section 33, Township 23 North, Range 4 East W.M., in King County, Washington, described as follows:

Beginning at a point of intersection of the east line of the northeast quarter of the southeast quarter of said Section 33, with the north line of South 188<sup>th</sup> Street as established by Deeds recorded under King County Recording Nos. 2522597 and 5350935; thence along the east line of said northeast quarter, north 3 degrees 04 minutes 29 seconds east 230.00 feet; thence parallel with said north line, north 88 degrees 10 minutes 06 seconds west 177.36 feet; thence south 12 degrees 54 minutes 07 seconds west 234.31 feet to said north line; thence along the north line of said South 188<sup>th</sup> Street, north 88 degrees 10 minutes 66 seconds east to the true point of beginning.

Tax Parcel No.: 332304-9188

SUBJECT TO easements, restrictions and reservations of record.

Dated this 14 day of August, 2008.

GRANTOR:

x Robert G. Smith

Robert G. Smith, Trustee of the Robert G. Smith Qualified Personal Residence Trust of 1996

STATE OF WASHINGTON )

COUNTY OF KING )

On this 14<sup>th</sup> day of August, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ROBERT G. SMITH, to me known to be the person who signed as Trustee of the Robert G. Smith Qualified Personal Residence Trust of 1996 and who executed the within and foregoing instrument and acknowledged said instrument to be his free and voluntary act and deed for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute the said instrument as Trustee of said Trust.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Patrick J. McGowan  
Printed Name: PATRICK J. MCGOWAN  
NOTARY PUBLIC in and for the State of Washington, residing at Bellevue, WA  
My Commission Expires: 9-15-2010

movies, etc.

**DR/Medical/ Dental: 3, 600.00**

Doctors are very cheap here, but medicine is almost as expensive as in USA.

**Visa Extension: 1,250**

One year for a tourist Visa is just over 14,000 so I take the average.

**Miscellaneous :16, 000**

This is primarily for my girl friend's school, road trips, household items, etc. I believe everyone should budget 10-15^ above what they think they will spend for misc. expenses you just never know and better safe than sorry.

**Cost of my furniture and electronics**

Living Room couch and 2 big chairs: P22,000

Coffee Table: P4,000

Master Bedroom set (king-size Bed-all wood, mattress-8", two night stands) P40,000

Entertainment center table for TV and DVD: P4,000

29" Samsung color TV (regular screen not flat):

P20,000

Samsung DVD player: P6,500

Computer setup (computer, monitor, printer, scanner, keyboard, mouse, software loaded, good quality) -

P37,000

**A Sample Budget (Cost of Living) for Cebu City**

JAN 2003 (XR: \$1 = PHP 53.70)	BUDGET
53.00	
House Rent	PHP 12,000
Electricity	PHP 3,000
Bottled Gas	PHP 250
Telephone	PHP 1,500
Cell Phone	PHP 150
Internet (DSL)	PHP 2,500
Cable TV (Sky Cable)	PHP 505

Exhibit 2

COPY

Maid	PHP 2,000
Visa Extension	PHP 1,260
Mail Service	PHP 350
Medical Treatment	PHP 1,000
Dental Treatment	PHP 1,000
Medicine	PHP 1,000
Food (Groceries)	PHP 10,000
Food (Restaurant)	PHP 2,500
Distilled Water	PHP 450
Household	PHP 3,000
Personal Care	PHP 1,000
Clothing	PHP 1,500
Entertainment (Bar Hopping & etc)	PHP 20,000
Computer (Hardware/Software Purchases)	PHP 1,000
Home Liquor Cabinet / Beer	PHP 2,500
Miscellaneous, Taxis & etc.	PHP 4,000
<b>PESO TOTAL</b>	<b>PHP 72,465</b>
<b>Peso Totals in USD</b>	<b>\$1,367</b>
U.S. Mail Box (USABox.com)	\$20
Insurance (Health & Dental for children)	\$140
Postage	\$0
Credit Card # 1	\$0
Savings	\$473
Miscellaneous	\$0
<b>DOLLAR TOTAL</b>	<b>\$633</b>
<b>Budget Total In USD</b>	<b>\$2,000</b>

Westlaw

West's Ann.Cal.Fam.Code § 2550

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**C**

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Family Code (Refs &amp; Annos)

Division 7. Division of Property (Refs &amp; Annos)

Part 2. General Provisions (Refs &amp; Annos)

## → § 2550. Manner of division of community estate

Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, or as otherwise provided in this division, in a proceeding for dissolution of marriage or for legal separation of the parties, the court shall, either in its judgment of dissolution of the marriage, in its judgment of legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community estate of the parties equally.

CREDIT(S)

(Stats.1992, c. 162 (A.B.2650), § 10, operative Jan. 1, 1994.)

## LAW REVISION COMMISSION COMMENTS

Enactment (Revised Comment)

Section 2550 continues without substantive change the first sentence of the first paragraph of former Civil Code Section 4800(a). The phrase "or as otherwise provided in this division" has been substituted for "or as otherwise provided in this section," which referred to former Civil Code Section 4800. For the special rules for division of the community estate, see Sections 2600- 2604.

For applicability of this division to a proceeding for nullity of marriage, see Sections 2251 (where court finds putative spouse, "quasi-marital property" divided in accordance with Division 7), 2252 (liability of "quasi-marital property" same as community or quasi-community property). See also Sections 63 ("community estate" defined), 1620 (contract between married persons concerning their property), 2554 (use of arbitration where parties do not voluntarily agree to division), 2650 (division of jointly held separate property), 2660 (real property located in another state), 3592 (obligations of property settlement discharged in bankruptcy). [23 Cal.L.Rev.Comm. Reports 1 (1993)]

## HISTORICAL AND STATUTORY NOTES

2004 Main Volume

**Derivation:** Civil Code former § 137, enacted 1872; amended by Code Am.1877- 78, c. 298, § 1; Code Am.1880, c. 41, § 4; Stats.1905, c. 216, § 1; Stats.1907, c. 63, § 1; Stats.1917, c. 36, § 1; Stats.1927, c. 249, § 1; Stats.1929, c. 84, § 1; Stats.1941, c. 1038, § 1; Stats.1951, c. 1700, § 1.

Civil Code former § 146, enacted 1872; amended by Code Am.1873-74, c. 612, § 33; Stats.1941, c. 951, § 3;

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West's Ann.Cal.Fam.Code § 2550

Stats.1949, c. 1589, § 1; Stats.1951, c. 1700, § 10; Stats.1961, c. 636, § 4; Stats.1968, c. 457, § 1.

Civil Code former § 147, enacted 1872, amended by Code Am.1873-74, c. 612, § 34.

Civil Code former § 4800, added by Stats.1969, c. 1608, § 8, amended by Stats.1970, c. 962, § 3.5; Stats.1970, c. 1575, § 3; Stats.1976, c. 762, § 1; Stats.1978, c. 1323, § 2; Stats.1979, c. 638, § 1; Stats.1982, c. 497, § 18; Stats.1983, c. 1159, § 7; Stats.1984, c. 29, § 1; Stats.1984, c. 1661, § 1; Stats.1984, c. 1671, § 23; Stats.1986, c. 215, § 1.

Stats.1850, c. 103, § 12.

West's Ann. Cal. Fam. Code § 2550, CA FAM § 2550

Current with urgency legislation through Ch. 156 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., Ch. 26 of the 2009-2010 3rd Ex.Sess., and Ch. 24 of the 2009-2010 4th Ex.Sess., Governor's Reorganization Plan No. 1 of 2009, Prop. 1F, approved at the 5/19/2009 election, and propositions on the 6/8/2010 ballot received as of 9/15/2009

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▷

In re the Marriage of OLGA L. AND HOWARD J.  
 CREAM.

OLGA L. CREAM, Appellant,

v.

HOWARD J. CREAM, Respondent.

No. A054760.

Court of Appeal, First District, Division 5, California.

Feb. 10, 1993.

## SUMMARY

The trial court, in a marital dissolution proceeding in which both parties desired to run the family business, the only privately owned geyser in the United States, ordered a nonbinding private auction between the parties to dispose of the business over the repeated objections of the wife. The auction was held, and the wife purchased the business after the husband was unable to close escrow. (Superior Court of Napa County, No. 54795, W. Scott Snowden, Judge.)

The Court of Appeal affirmed the judgment awarding the wife the property, but remanded to the trial court to fix the fair market value. The court held that the trial court possesses no authority to divide the community estate other than equally and cannot delegate its responsibility to fix the fair market value of the community estate when assets are not divided in kind, which was the effect of the court-ordered interspousal auction. Because of the terms of the auction and the threat of a public sale and most importantly because the wife's objection to the procedure established she was not a willing buyer within the definition of fair market value, the procedure ordered by the trial court did not establish fair market value. Without a stipulation of the parties, the trial court could not abdicate its statutory responsibility to value and divide the community estate. (Opinion by King, J., with Peterson, P. J., and Haning, J., concurring.)

## HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Dissolution of Marriage; Separation § 53—Division of Community and Quasi-community Property—Family Business—Involuntary Interspousal Auction.

In a marital dissolution proceeding in which both parties desired to run the family business, the only privately owned geyser in the United States the trial court erred in ordering a nonbinding private auction between the parties to dispose of the business over the repeated objections of the wife. The trial court possesses no authority to divide the community estate other than equally (Civ. Code, § 4800) and cannot delegate its responsibility to fix the fair market value of the community estate when assets are not divided in kind, which was the effect of the court-ordered interspousal auction. The procedure ordered by the trial court, because of the terms of the auction and the threat of a public sale, did not establish fair market value, particularly in view of the wife's objection to the procedure, which established that she was not a willing buyer within the definition of fair market value. Without a stipulation of the parties, the trial court could not abdicate its statutory responsibility to value and divide the community estate.

[See 11 Witkin, Summary of Cal. Law (9th ed. 1990) Community Property, §§ 174, 183.]

(2) Appellate Review § 6—Who May Appeal—Waiver of Right—Acceptance of Benefits.

The rule that voluntary acceptance of the benefits of a judgment bars appeal therefrom, is subject to qualifications, including that the appellant must have made a clear and unmistakable acquiescence in the judgment, an unconditional, voluntary, and absolute acceptance of the fruits thereof.

(3) Dissolution of Marriage; Separation § 52—Division of Community and Quasi-community property—Valuation—Discretion—Methods.

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Trial courts possess broad discretion to determine the manner in which marital property is divided in order to accomplish an equal division. As long as its determination is within the range of the evidence presented, the court possesses broad discretion to also determine the value of community assets. One or more of the following methods of division may be used (1) in kind; (2) asset distribution or cash out; (3) sale and division of proceeds; or (4) conversion to tenancy in common where the sale of the family home is deferred pursuant to Civ. Code, § 4700.10.

(4) Dissolution of Marriage; Separation § 50—Division of Community and Quasi-community Property—Cash Out Method of Division: Words, Phrases, and Maxims—Cash Out Division of Community Property.

The asset distribution or “cash out” method of division of community property involves distributing one or more community assets to one spouse and other community assets of equal value (which may include an equalizing promissory note) to the other. When this method is used, Civ. Code, § 4800, confers on the court the responsibility to fix the value of assets and liabilities in order to accomplish an equal division.

(5) Dissolution of Marriage; Separation § 53—Division of Community and Quasi-community Property—Award of Particular Asset to One Party to Effect Equal Division—Family Business.

The trial court has authority under Civ. Code, § 4800, to order an asset sold, with the proceeds divided in the proportion necessary to accomplish an equal division of the community estate. However, where the asset at issue is a family business which the court finds either party is capable of operating, and each seeks its award and can purchase the other's share, a sale to a third party should not be ordered. Although the business may be difficult to value, and it may be even more difficult to decide the spouse to whom it should be awarded when both have been operating the business and both want it and can purchase it, it will usually be an ab-

use of discretion not to award it to one of the spouses.

(6) Dissolution of Marriage; Separation § 61—Property Rights of Parties—Spousal Support—Effect on Reimbursement Claim for Work Performed.

In dissolution of marriage proceedings involving the division and valuation of a family business, the trial court did not err in finding that the wife's reimbursement claim for a reasonable salary for her postseparation work at the business was cancelled out by the husband's support claim for the same period. The fact the husband was receiving one-half of the profits from the business just like the wife was not dispositive of his claim, since, unlike the wife, he was prohibited by court order from working and earning his salary in the business.

COUNSEL

Bernard N. Wolf for Appellant.

Vincent M. Spohn and James L. McIntosh for Respondent \*84

KING, J.

In this case we hold that trial courts lack authority in marital dissolution cases to order interspousal auctions of property over the objection of a party because determination of the value and division of community property is a nondelegable judicial function. For the benefit of the family law bench and bar we suggest alternatives to judicial determination which parties, by stipulation, might utilize to resolve property issues.

Olga L. Cream (now Kolbek) appeals from a dissolution judgment, challenging (1) the trial court's method of valuing and disposing of a parcel of community real property on which a community business was operated, and (2) the denial of her request for compensation for the operation of the business pending trial.

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## I

Olga and Harold Cream were married in 1970. <sup>FN1</sup>In 1973 they purchased real property and a business known as the Old Faithful Geyser of California. On November 9, 1987, Olga filed a petition for dissolution of marriage. In January 1988, the trial court gave her exclusive occupancy and operation of the geyser pending trial. Apparently, the parties shared the profits equally during that time. On August 3, 1989, the trial court rendered a judgment of dissolution as to status only. At a later time the issue of division of property was tried.

FN1 For ease of reference, we will refer to the parties by their first names, Olga and Harold. (See *In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475-476, fn. 1 [274 Cal.Rptr. 911].)

The property in dispute is unique, the only privately owned geyser in the United States. Each party was prepared to submit an appraisal valuing the property at \$800,000, although neither appraisal was actually received in evidence. While Olga, the trial court said in a statement of decision, made "a persuasive showing that she is particularly interested in the business and that she is particularly capable of running it profitably," Howard offered "to have it awarded to him at significantly above the market value." The court stated it had "a duty, owed jointly to the parties to maximize the assets of the community." The court felt that ignoring Howard's offer to pay more than fair market value "would not be a just result," since it would not maximize the value of community property.

Accordingly, "in exercise of its discretion in providing for a fair and equal division of the community property of the parties," and over Olga's repeated objections, the court ordered a nonbinding private auction between the \*85 parties to dispose of the geyser. Under tentative guidelines, each party would bid for the one-half interest of the other, unconditionally except for the procurement of financing, in increments of \$1,000 beginning with

\$400,000. If the successful bidder failed to post a 10 percent deposit within one day or to close escrow within 90 days, the property would be sold to the other party at his or her highest offer. If neither party was able to complete a sale in this manner, the geyser would be sold through a public auction or listing process.

The court denied both Olga's request for credit for her pendente lite work at the geyser and Howard's request for "prospective and retroactive" spousal support. The court reasoned, "To the extent that [Olga] may have been entitled to payment for her services, [Howard] may also have been entitled to support since he was excluded from the business." Furthermore, "depending upon the result of the auction, [Howard] will have either enough cash to support himself or a business by which to employ himself."

In a partial response to Olga's objections, the court modified the auction procedure, deleting the 10 percent deposit requirement and retaining jurisdiction to extend for good cause the escrow closing date. More importantly, the court ruled that should the high bidder fail to close escrow on time, the other party might either buy at his or her last bid or refer the matter to the court, which would then have the duty-taking into account the evidence at trial and the expressions of value shown by the parties during the auction-to fix the value of the asset and award it, or to order its public sale to a third party.

The auction took place on May 21, 1991. Olga's highest bid for Howard's one-half was \$596,000; Howard's was \$600,000. The court accordingly valued the geyser at \$1.2 million and awarded it to Howard subject to the previously specified conditions. Olga continued to object to the auction procedure. The trial court rendered judgment on June 27, 1991.

On August 20, Howard having been unable to close escrow, Olga purchased his interest in the property for \$596,000, but filed a notice of appeal contesting "the fact that she should be required to pay

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\$596,000 instead of one-half the actual appraised value of the property and business." On August 26, Howard filed a cross-appeal which he subsequently abandoned. Escrow closed on December 18, 1991.

## II

(1a) Olga's primary contention is that the court lacked authority to order interspousal disposition of this community asset by auction. (2) Howard maintains she has waived this issue by accepting the benefits of and/or \*86 voluntarily complying with the judgment. ( *Lee v. Brown* (1976) 18 Cal.3d 110, 114, 115 [ 132 Cal.Rptr. 649, 553 P.2d 1121].) However, the rule that voluntary acceptance of the benefits of a judgment bars appeal therefrom is subject to qualifications. ( *In re Marriage of Brockman* (1987) 194 Cal.App.3d 1035, 1044 [ 240 Cal.Rptr. 96].) The appellant must demonstrate a "clear and unmistakable acquiescence in" the judgment, an "unconditional, voluntary, and absolute" acceptance of the fruits thereof. ( *In re Marriage of Feinstein* (1976) 17 Cal.3d 738, 744 [ 131 Cal.Rptr. 873, 552 P.2d 1169].) Olga's consistent objections to the auction procedure, the resultant valuation of the geyser, and the terms of the judgment preserved the issue on appeal.

(1b) Olga contends an interspousal auction such as the one employed here cannot be ordered over the objection of a spouse and that it necessarily results in an unequal division of property contrary to the mandate of Civil Code section 4800. <sup>FN2</sup>In support of this conclusion she notes that the fair market value as established by the auction procedure in this case was 50 percent higher than the appraisals the parties were prepared to submit.

FN2 Unless otherwise indicated, all further statutory references are to the Civil Code.

The trial court's authority to order an interspousal auction of community property generally, and to determine the value of a family business and the party to whom it is to be awarded in particular, is

an issue of first impression in California. Indeed, our research has determined that the only reported decision in the United States involving this issue is *In re Marriage of Dennis* (Iowa Ct.App. 1991) 467 N.W.2d 806, in which the court rejected the use of an interspousal bidding process to establish the value of a closely held corporation in which each party owned 50 percent of the stock. Although *Dennis* is not binding authority in California, its reasoning is persuasive. The court held the trial court's use of a bidding process "avoids the judicial responsibility of valuation and is, therefore, an unacceptable methodology." (*Id.* at p. 808.) It found the process particularly inappropriate where the parties are not willing buyers and sellers, but "dissolution litigants ... in a highly charged setting." (*Ibid.*) "Parties may be experiencing a number of emotions including depression, anger, vengeance, or stress. Furthermore, there are several mechanical difficulties and potential inequalities that may arise in this type of transaction and affect the bidding, such as the availability of financing and other resources (i.e., access to guarantors or banking connections, etc.), the establishment of management, and the reputation of the respective spouses. In such a setting," the court concluded, "we do not believe a trial court is able to take sufficient precautions to ensure a fair value will result from a bidding process." (*Id.* at pp. 808-809.) The court acknowledged the difficulty of the trial court's task in determining value of a marital asset, especially where, as in that case, the asset was a closely held \*87 corporation and large variations in value were presented in evidence, and noted that this is why the law provides trial courts great leeway. "Yet, the law does not provide so much 'leeway' as to condone the relinquishment of judicial duties." (*Id.* at p. 808.) <sup>FN3</sup>

FN3 The factual circumstances in *Dennis* bear a startling resemblance to those present here. The marital asset at issue there was also a family business which the parties ran jointly. Each wanted to purchase the 50 percent interest of the other. The trial court determined that the business

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was worth more to either of the parties than the \$290,000 fair market value testified to by an expert witness. Since there was some evidence that the business was worth more than the value testified to by the expert, including testimony by one of the parties, the court concluded that the fairest way to determine fair market value would be by a bidding process between the parties. The husband objected to the use of an interspousal auction, but when it proceeded by court order over his objection, he was the high bidder at \$576,000 for the entire business. The court fixed \$576,000 as the fair market value of the business, and awarded it to the husband, who then appealed.

We must examine California's statutory scheme to ascertain whether a trial court here nevertheless possesses the authority to order, over the objection of a party, an interspousal auction for the purpose of fixing the fair market value of community property and awarding it to a party at that value. The only applicable statutes appear to be sections 4800 and 4351.

Section 4800, subdivision (a) is the court's authority to divide the community estate. It is worth mentioning, for reasons which will become evident later in our discussion, that unlike virtually every other state, California has restricted judicial authority by requiring trial courts to divide the community estate equally between the parties, except for limited circumstances specified in later provisions of section 4800 which are inapplicable here. The parties, on the other hand, by written agreement or oral stipulation in open court, are free to divide their community estate in any fashion they wish and need not divide it equally.

In section 4351, the Legislature has specifically conferred jurisdiction upon the court in actions under the Family Law Act "to inquire into and render any judgment and make such orders as are appropriate concerning ... the settlement of the property

rights of the parties. ..." Finally, section 4800, subdivision (f) provides that the court "may make such orders as it deems necessary to carry out the purposes of this section." Although the Family Law Act contains other provisions pertaining to the property rights of the parties, none relate to the issue of the court's authority to make the order in dispute in this case.

Our examination of the statutory scheme also requires us to consider Family Law Rules adopted as California Rules of Court since, uniquely in this field of law, the Legislature has specifically authorized the Judicial \*88 Council to adopt rules superseding contrary statutes. (See *In re Marriage of McKim* (1972) 6 Cal.3d 673, 678, fn. 4 [ 100 Cal.Rptr. 140, 493 P.2d 868].) Only two rules are possibly applicable to the issue before us. Rule 1242 pertains to division of property and provides in part, "The court in every case shall ascertain the nature and extent of all assets and obligations subject to disposition by the court in the proceeding and shall divide such assets and obligations as provided in the Family Law Act ...." Rule 1249 states, "In the exercise of the court's jurisdiction pursuant to the Family Law Act, if the course of proceeding is not specifically indicated by statute or these rules, any suitable process or mode of proceeding may be adopted by the court which appears conformable to the spirit of the Family Law Act and these rules."

(3) In applying these statutes and rules, trial courts possess broad discretion to determine the manner in which marital property is divided in order to accomplish an equal division. ( *In re Marriage of Connolly* (1979) 23 Cal.3d 590, 603 [ 153 Cal.Rptr. 423, 591 P.2d 911].) Likewise, as long as its determination is within the range of the evidence presented, the court possesses broad discretion to determine the value of community assets. (See *In re Marriage of Bergman* (1985) 168 Cal.App.3d 742 [ 214 Cal.Rptr. 661].)

One or more of the following methods of division may be used: (1) in kind, (2) asset distribution or

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cash out, 3) sale and division of proceeds, or (4) conversion to tenancy in common where the sale of the family home is deferred pursuant to section 4700.10. (For a detailed discussion of these methods, see Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 1992) ¶ 8:225 et seq.) (4) The asset distribution or cash out method involves distributing one or more community assets to one spouse and other community assets of equal value (which may include an equalizing promissory note) to the other. When, as here, this method is used, section 4800 confers upon the court the responsibility to fix the value of assets and liabilities in order to accomplish an equal division. (*In re Marriage of Micalizio* (1988) 199 Cal.App.3d 662 [245 Cal.Rptr. 673]; *In re Marriage of Jafeman* (1972) 29 Cal.App.3d 244 [105 Cal.Rptr. 483].)

(1c) Except for those provisions of section 4800 which specify circumstances in which the community estate need not be divided equally, which are inapplicable here, the court possesses no authority to divide the community estate between the parties other than equally, and cannot delegate its responsibility to fix the fair market value of the community estate where assets are not divided in kind. (*In re Marriage of Knickerbocker* (1974) 43 Cal.App.3d 1039, 1047-1048 [118 Cal.Rptr. 232].) This was the effect of the court-ordered interspousal auction in this case, which was therefore unauthorized by the pertinent statutes and rules. \*89

In our view, the fair market value of a marketable asset in marital dissolution cases is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no obligation or urgent necessity to do so, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing. <sup>FN4</sup>We restrict the use of this definition to marketable assets because some marital assets are not marketable, but nonetheless may have to be valued. Obviously, the procedure ordered by the trial court in the present case does not establish fair market value as so defined because of the terms of the auction and the

threat of a public sale, and most importantly because Olga's objection to the procedure clearly establishes she was not a willing buyer within the definition.

FN4 This definition is a modification of the definition of fair market value for condemnation cases contained in Code of Civil Procedure section 1263.320.

Without a stipulation of the parties, the trial court cannot abdicate its statutory responsibility to value and divide the community estate. We hold the court has no authority to order an interspousal auction of a community asset, over the objection of a party, as a substitute for the court valuing and making its award of that asset. <sup>FN5</sup>

FN5 Even if we had found the court could order an interspousal auction over a party's objection, we would have reversed because the court erred in the ground rules it set for the conduct of the auction. The fact the bidding was not binding created the possibility that Harold, knowing how much Olga wanted this asset, would keep increasing his bid until she dropped out, knowing he would not be required to purchase it for his bid price. In a marital action, where emotion often overcomes judgment, this should not be permitted. It is for this very reason that California Uniform Commercial Code section 2328 precludes the final bidder at an auction from retracting his or her bid, and Business and Professions Code section 5776, subdivision (o) precludes an auctioneer from allowing anyone to bid for the sole purpose of increasing the bid.

Additionally, the court erred in stating it would order a public sale if neither party purchased the property as a result of the auction. This statement, in the context of a family business, could be especially coercive. Olga contends that when Harold did

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not fulfill his bid, the court's threat of a public sale compelled her to purchase the business at her bid price, even though she believed the appraisal value was the true fair market value. This potential for coercion takes the auction result outside our definition of fair market value.

### III

(5) Nothing in this opinion should be construed as limiting in any way the court's authority under section 4800 to order an asset sold, with the proceeds divided in the proportions necessary to accomplish an equal division of the community estate. (*In re Marriage of Holmgren* (1976) 60 Cal.App.3d 869, 873 [ 130 Cal.Rptr. 440].) A sale is often required.<sup>FN6</sup> However, where the asset at issue is a family business which the court finds \*90 either party is capable of operating, and each, seeks its award and can purchase the other's share, a sale to a third party should not be ordered. Although the business may be difficult to value, and it may be even more difficult to decide the spouse to whom it should be awarded where both have been operating the business and both want it and can purchase it, it will usually be an abuse of discretion not to award it to one of the spouses.

FN6 An order for the sale of an asset or assets and for division of the proceeds is often the most expeditious and least expensive method of resolving disputes over property, especially items of personal property of limited value. Other alternatives available to the court include the court's appointment of its own expert to value the assets under Evidence Code section 730 or of a referee or special master, either by agreement of the parties or on the court's own motion. (See Code Civ. Proc., §§ 638, 639.) These alternatives can involve considerable expense and, of course, delay.

In the instant case, the spouses jointly operated this family business for over 15 years. The business could be awarded to one spouse with offsetting community or separate property assets used to cash out the other spouse. Under these circumstances, it would be an abuse of discretion to sell the business out from under both parties, simply because they could not agree upon its value or the one to whom it should be awarded. Those decisions are the court's responsibility. After all, such businesses do not simply represent an investment of capital; they are also an investment of sweat, toil, worry, and hopes. No matter how difficult the decision, the trial judge must bite the bullet, value the business and award it to one of the parties. No one ever said judging was easy.

If the court has no authority to resolve property disputes by ordering an interspousal auction over the objection of a party, does this mean auctions are a disfavored method of resolving disputes between divorcing spouses? On the contrary, auctions and other alternative methods of resolving property disputes are regularly used by innovative and knowledgeable family law lawyers, often at the suggestion of innovative and knowledgeable family law judges. For the benefit of the family law bench and bar—indeed, for the benefit of the increasing number of parties who represent themselves in marital dissolution cases—we attach as an appendix to this opinion a laundry list of alternative methods of resolving property division and valuation disputes which are frequently suggested by family law judges and lawyers, and stipulated to by parties.<sup>FN7</sup>

FN7 Many family law judges have recommended the use of these alternatives. The leading exponent of their use in California was Riverside County Superior Court Judge Robert Garst, when he served as that court's family law judge. One of California's most innovative and successful family law judges, he used methods such as these to fairly and effectively handle a high-

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volume family law caseload. By urging parties to use alternative methods to resolve their own disputes, especially disputes over property, Judge Garst recognized and respected the fact that the parties should be given every opportunity to reach their own decisions. After all, judges do not possess magical powers which enable them to reach the perfect solution to every dispute. Their role is to make the parties' decisions for them only if the parties cannot decide for themselves.

However useful these methods may be as a substitute for a judicial determination, absent statutory authority they can only be used by stipulation \*91 of the parties. The Legislature was wise to provide in section 4800 that the court must accept stipulations of the parties with regard to the disposition of their property. The court has no role in approving or disapproving property divisions agreed to by the parties. Except for conduct violative of section 4800.11, the parties possess the exclusive authority to agree upon the disposition of their property. The court's only role with regard to a proper stipulated disposition of marital property is to accept the stipulation and, if requested, to incorporate the disposition into the judgment.

For the most part, the methods to resolve disputes over marital property listed in the appendix can and should be utilized without any direct judicial participation. Although the judge may recommend one or more of these methods at a settlement conference or at trial, negotiation of the terms and implementation of the method chosen can be done outside the presence of the judge. It has been our experience as trial judges, as well as the experience of knowledgeable family law judges in California, that there is rarely any hesitancy on the part of divorcing spouses to agree to use one or more of these methods to resolve an impasse in the division of assets. Indeed, the parties usually greet the suggestion with enthusiasm.

These methods can be valuable tools in both ascer-

taining the value of community property and determining the party to whom it is awarded. Their use can avoid game-playing, discovery disputes, the expense of experts and lengthy and costly trials. The conditions under which they are used must be fair, and neither party should be disadvantaged by the method selected. The parties must be on a reasonably equal financial footing and be fully informed about the legal effect of the terms to which they are agreeing. If the process is conducted fairly, the recipient of the property at the price specified has no basis for complaint because the recipient believes the property is worth what he or she is paying for it. The other party has no basis for complaint because that party is receiving more for the property than he or she thought it was worth, since he or she was unwilling to pay that much to the other party to obtain the property.

The items most typically disposed of by the use of one of these methods are the proverbial "pots and pans." Indeed, furniture, furnishings and other personal property are regularly disposed of by one of these methods. The alternative may be a court-ordered garage sale. Disputes over appraised items where the appraised value is accepted by the parties as correct, such as wine collections, works of art, etc., are often resolved by one of these methods. These methods are especially useful when, as is frequently the \*92 case, each party wants the same item or items and there is no good reason for the court to award an item to one spouse rather than the other. As in the instant case, these methods can also be used to determine both the value and the disposition of a community business, although this may be appropriate only where each spouse is capable of operating the business. Even where a family business is not operated by both spouses, one of these methods may be utilized when each spouse wants the business, if the business is readily saleable or can be operated by a capable manager.

Experienced family judges and lawyers know that the best resolution of marital disputes is that reached by agreement of the parties themselves.

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The alternatives in the appendix are vehicles to assist disputing spouses in reaching agreement on how to dispose of their property. Indeed, they represent self-empowerment vehicles to assist the parties in making their own decisions, rather than having a decision imposed upon them by the court after a lengthy and expensive trial. In some cases the cost of the trial could exceed the value of the property in dispute. We encourage the family law bench and bar to recommend that parties in marital dissolution actions consider making use of whatever alternatives to judicial resolution of property disputes can be agreed upon by the parties.

## IV

(6) By analogy with *In re Marriage of Epstein* (1979) 24 Cal.3d 76 [ 154 Cal.Rptr. 413, 592 P.2d 1165] (reimbursement for postseparation expenditure of separate property funds to preserve and maintain family residence), Olga also contends she was entitled to a reasonable salary for her postseparation work at the Geyser. She alleges the trial court erred in finding that her reimbursement claim was cancelled out by Howard's support claim for the same period. This point was expressly placed before the court in Howard's trial brief and argued in Olga's posttrial brief. <sup>FN8</sup>We find no error. The fact that Howard was receiving one-half the profits from the geyser "just like Wife" is not dispositive of his claim since, unlike Wife, he was prohibited by court order from working and earning a salary there.

FN8 The court also had before it the parties' income and expense declarations and tax returns.

## V

Since Olga has paid the amount she bid for the property and has been operating the business, we affirm the judgment awarding her the property. However, we remand the case to the trial court for the purpose of fixing the fair market value of the

property as of the date the parties made their bids. If the price Olga paid exceeded the fair market value of one-half the property \*93 as of that date, Harold shall be ordered to pay her the difference, plus interest from the date of her payment. Olga shall recover her costs on appeal. Any request for attorney fees on appeal shall be directed to the trial court.

Peterson, P. J., and Haning, J., concurred.  
 Respondent's petition for review by the Supreme Court was denied May 13, 1993, Panelli, J., and Baxter, J., were of the opinion that the petition should be granted. \*94

## Appendix

Methods of Division of Community Property Other Than by Judicial Decision

1. In-Kind Division: Each party takes one-half of fungible assets such as bank accounts, stock in a corporation, etc.
2. Trade-off Division: The parties stipulate to settle their property disputes, without regard to value, by agreeing one will take certain items of property, e.g., the furniture, and the other will take other items, e.g., the car.
3. Piece-of-cake Division: This method gets its name from the common situation where two children have a piece of cake to be cut in half. To avoid the argument over who gets the "bigger" half, it is agreed that one will cut the cake and the other gets to choose which piece he or she will receive. In the marital property context, one party makes up two lists of the property in question, e.g., furniture, personal property, etc., which he or she believes are equal, and the other party chooses which list of items she or he will take. In using this or any other method, it is important not to break up sets, e.g., a dining room set, a set of dishes, matching art

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works, etc. The piece-of-cake method is particularly useful for dividing furniture and furnishing which usually have a real value to the parties far in excess of their fair market value as used furniture. This method is also useful in short-term marriages where the dispute is over the division of wedding gifts received by the parties.

4. One Values, the Other Chooses: In this method, one party places a value on each item of community property in dispute and the other party chooses those items he or she will take at the stated value up to one-half the total value. Alternatively, the parties may agree that the party choosing may select any, all or none of the items, with any items not chosen going at the stated value to the one who set the value. An equalization payment can be required. In dividing furniture and furnishings using this or one of the other methods listed, an alternative to piece-by-piece choice is to list furniture and furnishings room-by-room and have alternate choices by room.

5. You Take It or I Will Take It: In this method one party places a value on an asset at which that party is willing to let the other party be awarded the asset, or else the former will be awarded the asset at that value.

6. Appraisal and Alternate Selection: An appraiser is selected by stipulation to value each of the items in question. The parties then choose items alternately until all items are taken. The one to make the first choice can be designated by the flip of a coin. Another approach is to let one party go first and the other party then gets two selections, after which choices are made alternatively. As mentioned in No. 3 above, it is usually preferable to agree that sets not be broken up. It might be agreed that if a party takes a set it counts as that many choices, e.g., a dining room table and four matching chairs counts as five choices, and the other party then makes the next five choices.

7. Sale: The parties agree that the items in question be sold at a public sale or to a particular buyer with the proceeds divided equally, or in whatever other

proportion is necessary to accomplish a satisfactory or equal division, considering the other marital assets or obligations each is receiving. For modest furniture or furnishings, the sale may be a garage sale, since this might be what the court would order.

8. Sealed Bid: Each of the parties submits a sealed bid on each item of property in dispute, using the same list. The bids are opened simultaneously and the one bidding the highest amount for an item gets that item valued at the figure he or she bid, with an equalizing payment to be made, if necessary. This method can also be used for disposition of the family home, other real property and a family business which both parties have operated, where each seeks to have it awarded to him or her.

9. Interspousal Auction: This is a straight auction between the parties, usually with an agreed minimum incremental increase over the last bid being required. The high bidder gets the asset at the amount of his or her bid with an equalizing payment being made, if necessary. To the extent a major asset is involved such as a family business or real estate, the stipulation might provide that each of the parties have an advisor present during the bidding.  
 \*95

10. Arbitration: The valuation and division of the community property in question could be determined by an arbitrator selected by the parties. The parties should understand that the arbitrator is not required to follow the law, and his or her decision, for all practical purposes, is final and not subject to appeal. Because arbitration usually takes much less time than a court trial, the parties might consider stipulating with the consent of the judge, that the judge hear the case as an arbitrator.

11. Mediation: Mediation is greatly underutilized in family law cases. It can be a very effective and satisfying way for the parties to reach agreement on the value and division of their marital property.

12. Real Property: If both parties want community

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real property, one of the foregoing methods of resolution can be used. If neither wants it, it can be listed for sale with a broker stipulated to by the parties, at a listing price recommended by the broker. If one wants the property but the other feels he or she is offering too little, the latter can list it for sale with a broker of his or her choosing. If the property does not sell within a specified period of time, the listing price will be periodically reduced until it reaches the figure where the net proceeds would be equal to what the other party offered. The property then goes to the offering party for the amount of the offer.

13. Combination: Where more than one marital asset is in dispute, one of the foregoing methods might be used for one asset, while one or more other methods might be used for other assets. \*96

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Aug 21, 1985.

[Opinion certified for partial publication. FN\*]

FN\* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of parts I through VI and part IX.

## SUMMARY

The trial court entered judgment in a dissolution of marriage proceeding, and found that the husband's medical practice had no goodwill value at the date of separation of the parties. Also, the trial court concluded that it did not have the authority to require the husband to reimburse the community for his exclusive use of the family residence and the medical practice between the date of separation and the date of trial, even though the court found that the husband had the exclusive use of such community property after separation. (Superior Court of Kern County, No. 160309, James M. Stuart, Judge. FN† ]])

The Court of Appeal affirmed in part, reversed in part, and remanded the matter. The court held that the trial court erred in finding that the husband's medical practice had no goodwill at the date of separation of the parties. Had the trial court employed the capitalized excess earnings method of valuing the goodwill of the medical practice, a monetary value would have resulted. However, the trial court by implication intended to employ such method in valuing the goodwill of the medical practice. Also, it would have been error had the trial court found that the medical practice had no goodwill simply

because there was no market for the practice. In the dissolution of marriage context, the mere fact that a professional practice cannot be sold, standing alone, will not justify a finding that the practice has no goodwill nor that the community goodwill has no value. Moreover, the trial court erred in concluding that it had no authority to reimburse the community for the value of the husband's exclusive use of such community property between the date of separation and the date of trial; upon remand the trial court must determine whether the husband should be required to reimburse the community.

FN† Assigned by the Chairperson of the Judicial Council.(Opinion by Best, J., with Hanson (P. D.), Acting P. J., and Hamlin, J., concurring.)

## HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Dissolution of Marriage; Separation § 52--Division of Community Property--Valuation--Professional Practice--Goodwill.

In a dissolution of marriage proceeding, the trial court erred in finding the husband's medical practice had no goodwill at the date of separation of the parties. Had the court employed the capitalized excess earnings method of valuing the goodwill of the medical practice, a monetary value would have resulted. However, by a finding of fact, the trial court by implication intended to employ such method in valuing the goodwill of the medical practice. Also, it would have been error had the trial court found that the medical practice had no goodwill simply because there was no market for the practice. In the dissolution of marriage context, the mere fact that a professional practice cannot be sold, standing alone, will not justify a finding that the practice has no goodwill nor that the community goodwill has no value.

(2) Dissolution of Marriage; Separation §

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52--Division of Community Property--Valuation--Professional Practice--Goodwill.

In a dissolution case involving a professional practice, the court must determine whether goodwill exists. If it does, the court must value it and take it into consideration in dividing the community property.

[See Cal.Jur.3d, Family Law, § 777; Am.Jur.2d, Divorce and Separation, §§ 994, 995.]

(3) Dissolution of Marriage; Separation § 54--Division of Community Property--Additional Award or Offset for Purpose of Restitution--Reimbursement for Exclusive Use of Community Property.

In a dissolution of marriage proceeding, in which the trial court found that the husband had the exclusive use of both the family residence and medical practice between the date of separation and the date of trial, the trial court erred in concluding it had no authority to require the husband to reimburse the community for the value of his exclusive use of such community property during such time. The case did not involve the use of separate property to pay community debts, and instead involved reimbursement to the community for the exclusive use of a community property asset by one spouse.

#### COUNSEL

Gill & Gill and S. B. Gill for Appellant Wife.

Arthur E. Wallace for Appellant Husband.

BEST, J.

The parties in this dissolution of marriage proceeding were married on September 30, 1975, and separated on April 29, 1979. Carol D. Watts (hereinafter referred to as Carol) filed her petition for dissolution of marriage on May 15, 1979. John D. Watts (hereinafter referred to as John) filed his response on June 14, 1979. Trial was held on September 14, 1981, and the interlocutory judgment was filed on April 12, 1982.

Thereafter on May 14, 1982, Carol brought a mo-

tion for temporary spousal support pending appeal, attorney fees and costs on appeal and an injunctive order. An order after hearing was filed by the court on August 12, 1982, which provided, among other things, that Carol would be awarded spousal support from John in the amount of \$400 per month payable monthly on the 15th day of each and every month commencing June 15, 1982, and continuing until the pending appeal is finally determined, the death or remarriage of Carol, or further order of the court, whichever first occurs. The order also provided an award of attorney fees to Carol's attorney for the appeal in the amount of \$3,000 plus costs incurred for the preparation of the clerk's and reporter's transcripts on appeal. John was also enjoined and restrained from borrowing against or removing any monies on deposit with his pension and profit-sharing plan except to the extent that said monies exceed \$125,000.

At the time of marriage, John was a board-certified surgeon who left the employment of the Kern Medical Center as the chief of the department of surgery approximately four months prior to marriage. During the said four-month period which commenced on June 1, 1975, he was associated in a medical partnership with Dr. Charles Ashmore. The practice continued until sometime in 1976 when a medical corporation was formed. The practice was then transferred to the corporation in exchange for stock. The partnership was not dissolved at that time.

Prior to his entry into the partnership with Dr. Ashmore, John was earning the sum of \$55,000 per year. At the time of his marriage to Carol, \*369 John's annual earnings were estimated to be approximately \$84,500, consisting of \$77,000 in salary income and \$7,500 in retirement benefits.

At the time of separation, John was earning approximately \$131,500, consisting of a salary of \$90,000 plus retirement plan contributions of approximately \$41,500.

Additional facts will appear in the discussion of the issues.

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## Discussion

### I FN\*

*Did the trial court improperly value the community property interest of the parties in the medical corporation?*

FN\* See footnote on page 366, *ante*.

## VII

*Did the trial court err in finding that John's medical practice had no goodwill value?*

John's experts, apparently utilizing the market value or comparable sales method of valuation, concluded that because no market existed for John's medical practice the practice had no goodwill. William Redmond qualified as an expert on the basis of his prior experience as an appraiser, his longstanding residence in the City of Bakersfield and his experience as inheritance tax referee, having been appointed to that position in January 1977. Mr. Redmond ultimately testified that the goodwill of the medical practice has no value. Similarly, Jimmy Sheats stated that he was a certified public accountant licensed by the State of California for approximately 12 years and had maintained his professional practice in the Bakersfield area for the entire 12 years. Mr. Sheats, after analyzing the books and the records of the professional corporation and answering extensive questions on those books and records, testified that in his opinion there was no goodwill in John's medical practice.

(1a)Carol contends that there was no substantial evidence to support the trial court's finding, arguing that Mr. Sheats' and Mr. Redmond's testimony is of little value to the extent that they both found no

goodwill in \*370 John's medical practice because the practice could not be sold. Carol instead points to the opinion testimony of her expert, John T. McWhorter, which was based on the capitalized excess earnings method of valuation of the goodwill, and whose conclusion was that the goodwill value of John's practice was \$293,000.

The trial court made findings of fact as follows:

### Findings of Fact

"9. Respondent's medical practice has no excess earnings during the course of the marriage and had no goodwill on the date of separation, the evaluation date ordered by the court pursuant to Petitioner's motion therefor."

### Specific Findings

"2. Respondent's earnings on the date of separation were \$90,000.00 in wages, and \$41,500.00 in retirement.

"3. A surgeon of similar skills to that of Respondent could have earned between \$90,000.00 to \$120,000.00 wages annually in the private sector on or about the date of separation, to wit, April 30, 1979."

Carol contends that the failure of the trial court to value goodwill in John's medical practice resulted in an unequal distribution of the community assets.

(2)It is undisputed that in a dissolution case involving a professional practice the court must determine whether goodwill exists. If it does, the court must value it and take it into consideration in dividing the community property. (*In re Marriage of Fonstein* (1976) 17 Cal.3d 738 [ 131 Cal.Rptr. 873, 552 P.2d 1169]; *In re Marriage of Slater* (1979) 100 Cal.App.3d 241 [ 160 Cal.Rptr. 686].)

Business and Professions Code section 14100 has defined the goodwill of a business as the expectation of continued public patronage. In *In re Mar-*

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*riage of Foster* (1974) 42 Cal.App.3d 577, 581 [117 Cal.Rptr. 49], the court quoted with approval from *In re Lyons* (1938) 27 Cal.App.2d 293, 297-298 [81 P.2d 180], as follows: “[Goodwill is] ‘... the advantage or benefit which is acquired by an establishment beyond the mere value of capital stock, funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers, on account of its local position, or common celebrity, or reputation for skill or affluence, or punctuality, or from other accidental circumstances, or necessities, or even from ancient partialities or prejudices. [Citation.] ... it is the probability that the old customers will resort to the old place. It is the probability that the business will continue in the \*371 future as in the past, adding to the profits of the concern and contributing to the means of meeting its engagements as they come in.’ [Citation.]”

In *In re Marriage of Fortier* (1973) 34 Cal.App.3d 384, 388 [109 Cal.Rptr. 915], the Court of Appeal upheld the trial court's finding of zero goodwill based on market value stating, “Therefore, since community goodwill may be evaluated by no method that is dependent upon the post-marital efforts of either spouse, then, as a consequence, the value of community goodwill is simply the market value at which the goodwill could be sold upon dissolution of the marriage, taking into consideration the expectancy of the continuity of the practice.”

In *In re Marriage of Foster, supra.*, 42 Cal.App.3d 577, the court, after discussing the *Fortier* case, explained that it did not believe the *Fortier* case restricts the method of evaluating goodwill to market value. (*Foster, supra.*, at pp. 583-584.) The court then held as follows: “The value of community goodwill is not necessarily the specified amount of money that a willing buyer would pay for such goodwill. In view of exigencies that are ordinarily attendant a marriage dissolution the amount obtainable in the market place might well be less than the true value of the goodwill. Community goodwill is

a portion of the community value of the professional practice as a going concern on the date of the dissolution of the marriage....

“In sum we conclude the applicable rule in evaluating community goodwill to be that such goodwill may not be valued by any method that takes into account the post-marital efforts of either spouse but that a proper means of arriving at the value of such goodwill contemplates any legitimate method of evaluation that measures its present value by taking into account some past result. Insofar as the professional practice is concerned it is assumed that it will continue in the future.” (*Id.*, at p. 584.)

Our research discloses no Supreme Court decisions which provide guidance in trying contested family law issues of goodwill valuation of businesses or professional practices. Instead, it appears that, as stated in *In re Marriage of Lopez* (1974) 38 Cal.App.3d 93, 109 [113 Cal.Rptr. 58], “each case must be determined upon its own facts.”

(1b)In the present case, by Specific Findings Nos. 2 and 3 the trial court apparently found that John's excess earnings as of the date of separation amounted to a minimum of \$11,500. (\$131,500 minus \$120,000.) This finding conflicts with Finding of Fact No. 9 that John's medical practice had no excess earnings. Had the court employed the capitalized excess earnings method of valuing the goodwill of the medical practice a monetary value would have resulted. (See Cal. Marital Dissolution Practice \*372 (Cont.Ed.Bar 1981) § 9.68, pp. 315-316; *In re Marriage of Foster, supra.*, 42 Cal.App.3d 577, 585.) By Finding of Fact No. 9, the trial court by implication intended to employ the capitalized excess earnings method in valuing the goodwill of John's medical practice. Nowhere in its notice of intended decision or in its findings of fact and conclusions of law does the trial court indicate otherwise.

We hold, therefore, that the trial court erred in finding that John's medical practice had no goodwill at the date of separation of the parties.

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We further conclude that it would have been error had the trial court found that John's medical practice had no goodwill simply because there was no market for the practice.

In *In re Marriage of Fenton* (1982) 134 Cal.App.3d 451 [ 184 Cal.Rptr. 597], the court quoted with approval from *In re Marriage of Foster* as follows: "The value of community goodwill is not necessarily the specified amount of money that a willing buyer would pay for such goodwill. In view of exigencies that are ordinarily attendant a marriage dissolution the amount obtainable in the marketplace might well be less than the true value of the goodwill. *Community goodwill is a portion of the community value of the professional practice as a going concern on the date of the dissolution of the marriage.* As observed in *Golden*, "... in a matrimonial matter, the practice of the sole practitioner husband will continue, with the same intangible value as it had during the marriage. Under the principles of community property law, the wife, by virtue of her position of wife, made to that value the same contribution as does a wife to any of the husband's earnings and accumulations during marriage. *She is as much entitled to be recompensed for that contribution as if it were represented by the increased value of stock in a family business.*" ( 270 Cal.App.2d 401, 405.) ( *In re Marriage of Foster*, *supra.*, 42 Cal.App.3d at p. 584, italics added.) ( *In re Marriage of Fenton*, *supra.*, at p. 461.)

In the dissolution of marriage context, the mere fact that a professional practice cannot be sold, standing alone, will not justify a finding that the practice has no goodwill nor that the community goodwill has no value.

Upon remand, the trial court will determine Carol's entitlement to goodwill in accordance with the views expressed in this opinion.

### VIII

*Did the court err in failing to reimburse the com-*

*munity for the reasonable value of the use of community property by John from the date of separation to the time of trial?*

(3)The trial court found that John had the "use of" both the family residence and the medical practice between the date of separation and the \*373 date of trial. The court then found that 10 percent was a fair rate of return to the community for the use of the residence and the medical practice by John. However, the trial court concluded that it did not have the authority to require John to reimburse the community for his exclusive use of the community property after separation. Carol contends this conclusion by the trial court is erroneous and contrary to existing case law.

Three cases cited by Carol do not directly deal with the issue herein, but address a somewhat related issue. In *In re Marriage of Smith* (1978) 79 Cal.App.3d 725 [ 145 Cal.Rptr. 205], one spouse was seeking reimbursement for the use of separate funds to pay community obligations after separation. The court concluded that in some cases reimbursement should be allowed, stating: "[W]e are persuaded the rule disallowing reimbursement in the absence of an agreement for reimbursement should not apply and that, as a general rule, a spouse who, after the separation of the parties, uses earnings or other separate funds to pay preexisting community obligations should be reimbursed therefor out of the community property upon dissolution. However, there are a number of situations in which reimbursement is inappropriate, so reimbursement should not be ordered automatically.

"Reimbursement should not be ordered if payment was made under circumstances in which it would have been unreasonable to expect reimbursement, for example, where there was an agreement between the parties the payment would not be reimbursed or where the paying spouse truly intended the payment to constitute a gift or, generally, where the payment was made on account of a debt for the acquisition or preservation of an asset the paying spouse was using and the amount paid was not sub-

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stantially in excess of the value of the use.” ( *Id.*, at p. 747.)

This language was specifically approved and adopted by the Supreme Court in *In re Marriage of Epstein* (1979) 24 Cal.3d 76, 84-85 [ 154 Cal.Rptr. 413, 592 P.2d 1165].

The present case does not involve the use of separate property to pay community debts, and instead involves the reimbursement to the community for the exclusive use of a community property asset by one spouse. In *In re Marriage of Tucker* (1983) 141 Cal.App.3d 128, 136 [ 190 Cal.Rptr. 127], this court also recognized the principle enunciated in *Smith* and *Epstein, supra.*, and expressly found that a \$30 monthly payment on the outstanding balance of \$450 for a refrigerator was not substantially in excess of the value of the exclusive use of the same by the paying spouse during the separation period. By its holding, this court necessarily found that the community \*374 was entitled to reimbursement for the value of the exclusive use of the refrigerator, a community asset, from the husband.

In *In re Marriage of Johnson* (1983) 143 Cal.App.3d 57, 62 [ 191 Cal.Rptr. 545], the wife contended that she was entitled to a portion of the postseparation gross receipts realized by the husband's use of the commercial fishing vessel alleged to be community property. The court held that, depending upon the trial court's determination of the community property interest in the vessel, the issue of the income derived from such use after separation must be addressed on remand. Thus, *Tucker* and *Johnson, supra.*, support the contention made by Carol. <sup>FN4</sup>

FN4 See also *In re Marriage of McNeill* (1984) 160 Cal.App.3d 548 [ 206 Cal.Rptr. 641].

We hold that the trial court erred in concluding that it had no authority to reimburse the community for the value of John's exclusive use of the family residence and the medical practice between the date of

separation and the date of trial.

Upon remand, the trial court will determine whether John should be required to reimburse the community for the value of his use of community assets after the date of separation in accordance with its findings. That determination should be made after taking into account all the circumstances under which exclusive possession was ordered. (See *In re Marriage of Smith, supra.*, 79 Cal.App.3d at p. 747 .)

IX <sup>FN\*</sup>

*Did the court err in failing to reimburse the community for John's use of community funds to discharge his separate indebtedness during marriage?*

FN\* See footnote on page 366, *ante.*

.....

Disposition

The trial court's order after judgment (issues V and VI herein) is affirmed. The judgment is affirmed in part (issues I-IV and IX), reversed in part (issues VII and VIII) and remanded for further proceedings in accordance with this opinion. \*375

John to bear costs on appeal.

Hanson (P. D.), Acting P. J., and Hamlin, J., concurred.

A petition for a rehearing was denied September 17, 1985, and the judgment was modified to read as printed above. \*376

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▷ In re Marriage of Watts, 171 Cal.App.3d 366, 217 Cal.Rptr. 301 (Cal.App. 5 Dist. Aug 21, 1985) (NO. CIV. F000494, CIV. F001560)

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- ▶ 2 In re Marriage of Green, 261 Cal.Rptr. 294, 297, 213 Cal.App.3d 14, 22 (Cal.App. 1 Dist. Aug 11, 1989) (NO. A039868) ★ ★

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## ★★★★ Examined

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- ▶ 4 In re Marriage of Hipp, 2008 WL 3970866, \*1+ (Cal.App. 4 Dist. Aug 27, 2008) (NO. G038130) HN: 1,2,4 (Cal.Rptr.)
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- ▶ 11 Olson v. Olson, 2005 WL 1097227, \*5+ (Cal.App. 2 Dist. May 10, 2005) (NO. B175954) HN: 4 (Cal.Rptr.)
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- 173 **Georgia VREEKEN, Petitioner and Respondent, v. Lawrence MCNAMEE, Respondent and Appellant., 2004 WL 3260758, \*3260758+ (Appellate Brief) (Cal.App. 2 Dist. Dec 06, 2004) Respondent's Brief (NO. B172158) \* \***

- 174 In Re Marriage of: Janine Eberle MYERS, Respondent and Cross-Appellant, William MYERS, Jr., Appellant and Cross-Respondent., 2004 WL 2542595, \*2542595+ (Appellate Brief) (Cal.App. 2 Dist. Sep 09, 2004) **Appellant's Reply Brief and Cross-Respondent's Brief** (NO. B162690) \* \* \* HN: 2,4 (Cal.Rptr.)
- 175 In re: the Marriage of MCTIERNAN and Dubrow John MCTIERNAN, Appellant and Cross-Respondent, v. Donna DUBROW, Respondent and Cross-Appellant., 2004 WL 1752333, \*1752333+ (Appellate Brief) (Cal.App. 2 Dist. Jun 15, 2004) **Combined Appellant's Reply Brief and Cross-Respondent's Brief (Redacted Public Copy)** (NO. B161255) \* \* \* HN: 2,4 (Cal.Rptr.)
- 176 Janine Eberle MYERS, Respondent and Cross-Appellant, v. William MYERS, Jr., Appellant and Cross-Respondent., 2004 WL 1121648, \*1121648+ (Appellate Brief) (Cal.App. 2 Dist. Apr 01, 2004) **Respondent's Brief/Cross-Appellant's Opening Brief** (NO. B162690) \* \* \* HN: 2,4 (Cal.Rptr.)
- 177 Angelica MARQUEZ, Petitioner/Respondent, v. Rafael MARQUEZ, Respondent/Appellant., 2004 WL 1121727, \*1121727+ (Appellate Brief) (Cal.App. 2 Dist. Mar 01, 2004) **Appellant's Reply Brief** (NO. B168036) " \* \* \* \* HN: 1,2,4 (Cal.Rptr.)
- 178 Angelica MARQUEZ, Respondent, v. Rafael MARQUEZ, Appellant., 2004 WL 1063731, \*1063731+ (Appellate Brief) (Cal.App. 2 Dist. Feb 10, 2004) **Respondent's Opening Brief** (NO. B168036) " \* \* \* \* HN: 2,4 (Cal.Rptr.)
- 179 In re: THE MARRIAGE OF MCTIERNAN and Dubrow, John McTiernan, Appellant and Cross-Respondent, v. Donna Dubrow, Respondent and Cross-Appellant., 2004 WL 485961, \*485961+ (Appellate Brief) (Cal.App. 2 Dist. Jan 15, 2004) **Combined Respondent's Brief and Cross-Appellant's Opening Brief (Redacted Public Copy)** (NO. B161255) \* \* HN: 1,3 (Cal.Rptr.)
- 180 Angelica MARQUEZ, Petitioner/Respondent, v. Rafael MARQUEZ, Respondent/Appellant., 2004 WL 486141, \*486141+ (Appellate Brief) (Cal.App. 2 Dist. Jan 13, 2004) **Appellants' Opening Brief** (NO. B168036) " \* \* \* \* HN: 1,2,4 (Cal.Rptr.)
- 181 Camelia ROBLES, Petitioner/Appellee, v. Michael ROBLES, Respondent/Appellant., 2003 WL 23209849, \*23209849+ (Appellate Brief) (Cal.App. 2 Dist. Dec 01, 2003) **Appellant's Opening Brief** (NO. B164740) \* \* HN: 4 (Cal.Rptr.)
- 182 In Re Marriage of: Janine Eberle MYERS, Respondent and Cross-Appellant, William MYERS, Jr., Appellant and Cross-Respondent., 2003 WL 23209783, \*23209783+ (Appellate Brief) (Cal.App. 2 Dist. Nov 05, 2003) **Appellant's Opening Brief** (NO. B162690) \* \* \* \* HN: 1,3,4 (Cal.Rptr.)
- 183 Tisa L. BEARDEN, Petitioner and Respondent, v. Robert G. BEARDEN, Jr., Respondent and Appellant., 2003 WL 22284461, \*22284461+ (Appellate Brief) (Cal.App. 2 Dist. Apr 08, 2003) **Respondent's Brief** (NO. B158638) \* \* HN: 4 (Cal.Rptr.)
- 184 IN RE Marriage Tisa L. BEARDEN, Petitioner- Respondent, v. Robert G. BEARDEN, Jr Respondent- Appellant., 2002 WL 32173462, \*32173462 (Appellate Brief) (Cal.App. 2 Dist. Jun 11, 2002) **Appellant's Opening Brief** (NO. B158638) \* \*
- 185 Nancy L. IREDALE, Petitioner and Respondent, v. Clifton B. CATES III, Respondent and Appellant., 2002 WL 32363893, \*32363893+ (Appellate Brief) (Cal.App. 2 Dist. Jun 10, 2002) **Appellant's Reply Brief and Cross-Respondent's Brief** (NO. B148135, B150855) \* \* \* \* HN: 4 (Cal.Rptr.)

- 186 In re the Marriage of Iredale and Cates, Nancy L. IREDALE, Respondent and, Cross-Appellant, v. Clifton B. CATES III, Appellant and Cross-Respondent., 2002 WL 32363892, \*32363892+ (Appellate Brief) (Cal.App. 2 Dist. Apr 19, 2002) **Respondent's Brief and Cross-Appellant's Opening Brief** (NO. B148135, B150855) \* \* \* **HN: 4 (Cal.Rptr.)**
- 187 Nancy L. IREDALE, Petitioner and Respondent, v. Clifton B. CATES III, Respondent and Appellant., 2001 WL 34613353, \*34613353+ (Appellate Brief) (Cal.App. 2 Dist. Dec 26, 2001) **Appellant's Opening Brief** (NO. B148135, B150855) " \* \* \* **HN: 2,4 (Cal.Rptr.)**
- 188 Nancy L. IREDALE, Petitioner and Respondent, v. Clifton B. CATES III, Respondent and Appellant., 2001 WL 34631040, \*34631040+ (Appellate Brief) (Cal.App. 2 Dist. Dec 26, 2001) **Appellant's Opening Brief** (NO. B150855, B150855) " \* \* \* **HN: 2,4 (Cal.Rptr.)**
- 189 IN RE the Marriage of Palin Margaret PALIN, Petitioner/Respondent, Grant PALIN, Respondent/Appellant., 2001 WL 34157574, \*34157574+ (Appellate Brief) (Cal.App. 2 Dist. Jun 08, 2001) **Appellant's Opening Brief** (NO. B146259) \* \* \* **HN: 4 (Cal.Rptr.)**
- 190 Siham ABU-KHALIL, Petitioner/Respondent, v. Khalil ABU-KHALIL, Respondent/Appellant., 2000 WL 34413064, \*34413064+ (Appellate Brief) (Cal.App. 2 Dist. Dec 12, 2000) **Respondent's Brief** (NO. B133244) \* \* \* **HN: 4 (Cal.Rptr.)**
- 191 Marriage of: Paul R. HAMMONS, Petitioner and Appellant, Debra A. HAMMONS, Respondent., 2000 WL 34414189, \*34414189+ (Appellate Brief) (Cal.App. 2 Dist. Oct 16, 2000) **Appellant's Reply Brief** (NO. B139238) \* \* **HN: 4 (Cal.Rptr.)**
- 192 Kevin C. SULLIVAN, Petitioner/Appellant, v. Shannon E. SULLIVAN, Respondent/Respondent., 2000 WL 34413897, \*34413897+ (Appellate Brief) (Cal.App. 2 Dist. Aug 03, 2000) **Appellant's Opening Brief** (NO. B135734) \* \* **HN: 4 (Cal.Rptr.)**
- 193 Michael L. POMPILIO, Petitioner/Appellant/Cross-Respondent, v. Annabelle POMPILIO, Respondent/Cross-Appellant., 2000 WL 34412266, \*34412266+ (Appellate Brief) (Cal.App. 2 Dist. Jun 20, 2000) **Appellant's Opening Brief** (NO. B137299) \* \* \* **HN: 4 (Cal.Rptr.)**
- 194 In Re Marriage of Ronald Eugene MCATEE, Petitioner and Appellant, v. Anna Lou MCATEE, Respondent and Respondent., 2000 WL 34415061, \*34415061+ (Appellate Brief) (Cal.App. 2 Dist. May 18, 2000) **Appellant's Opening Brief** (NO. B131481) " \* \* \* **HN: 2,4 (Cal.Rptr.)**
- 195 Mia Yutsu CHEN, Plaintiff-Appellant, v. Kuan-Jung LIN, Defendant-Respondent., 1999 WL 33901692, \*33901692+ (Appellate Brief) (Cal.App. 2 Dist. Aug 20, 1999) **Appellant's Opening Brief** (NO. B125060) \* \* **HN: 4 (Cal.Rptr.)**
- 196 In re the Marriage of Carl and Gloria BURTON, Gloria Burton, Petitioner/Respondent/Cross-Appellant, v. Carl Burton, Respondent/Appellant/Cross-Respondent., 1999 WL 33901068, \*33901068+ (Appellate Brief) (Cal.App. 2 Dist. May 17, 1999) **Cross-Appellant's Reply Brief** (NO. B114550) \* \* \* \* **HN: 1,4 (Cal.Rptr.)**
- 197 Louis FUENTES, Respondent and Appellant, v. Emilie FUENTES, Petitioner and Respondent., 1999 WL 34852106, \*34852106 (Appellate Brief) (Cal.App. 2 Dist. May 17, 1999) **Appellant's Reply Brief** (NO. B106529) \* \*
- 198 Janice M. ALBERTSEN, Petitioner and Appellant, v. Norman D. ALBERTSEN, Respondent and Respondent., 1999 WL 34853125, \*34853125+ (Appellate Brief) (Cal.App. 2 Dist. Mar 03, 1999) **Respondent's Brief** (NO. B122793) \* \* **HN: 4 (Cal.Rptr.)**
- 199 Louis FUENTES, Respondent and Appellant, v. Emilie FUENTES, Petitioner and Respondent.,

- 1999 WL 34852107, \*34852107+ (Appellate Brief) (Cal.App. 2 Dist. Jan 28, 1999) **Respondent's Brief** (NO. B106529) \* \* **HN: 4** (Cal.Rptr.)
- 200 Gloria BURTON, Petitioner/Respondent/Cross-appellant, v. Carl BURTON, Respondent/Appellant/Cross-respondent., 1998 WL 34351962, \*34351962+ (Appellate Brief) (Cal.App. 2 Dist. Dec 17, 1998) **Respondent's and Cross-Appellant's Brief** (NO. B114550) \* \* \* \*
- 201 In re Marriage of: Petitioner, Lena ALMASI, and Respondent, Gourgen Almasi; Lena Almasi, Respondent, Gourgen Almasi, Appellant., 1998 WL 34359032, \*34359032+ (Appellate Brief) (Cal.App. 2 Dist. Oct 28, 1998) **Respondent's Brief** (NO. B108801) \* \*
- 202 Rita MARTIN, Plaintiff and Appellant, v. James J. REGAN, Esq., Defendant and Respondent. And Related Cross-Actions., 1998 WL 34355912, \*34355912+ (Appellate Brief) (Cal.App. 2 Dist. Oct 13, 1998) **Appellant's Opening Brief** (NO. B115733) \* \*
- 203 In re THE MARRIAGE OF FUENTES; Louis Fuentes, Respondent and Appellant, v. Emilie Fuentes, Petitioner and Respondent., 1998 WL 34353877, \*34353877+ (Appellate Brief) (Cal.App. 2 Dist. Oct 01, 1998) **Appellant's Opening Brief** (NO. B106529) \* \* **HN: 4** (Cal.Rptr.)
- 204 In re the Marriage of: Carolyn L. DAVIS, Petitioner and Appellant, John O. DAVIS, Respondent and Cross-Appellant., 1998 WL 34344300, \*34344300 (Appellate Brief) (Cal.App. 2 Dist. Sep 14, 1998) **Respondent's Brief and Cross-Appellant's Opening Brief** (NO. B117239) \*
- 205 In re Marriage of: Bernard H. BULLER, Petitioner and Respondent, v. Margaret A. BULLER, Respondent and Appellant., 1998 WL 34351582, \*34351582+ (Appellate Brief) (Cal.App. 2 Dist. Aug 05, 1998) **Respondent's Brief** (NO. B113213) \* \*
- 206 Carolyn L. DAVIS, Petitioner/Appellant, v. John O. DAVIS, Respondent/Respondent., 1998 WL 34344298, \*34344298+ (Appellate Brief) (Cal.App. 2 Dist. Jul 23, 1998) **Appellant's Opening Brief** (NO. B117239) \* \* \* \*
- 207 In Re the Estate of: Victor G. CARTHRAE, Respondent, v. Sarah E. CARTHRAE, Petitioner., 1998 WL 34352623, \*34352623+ (Appellate Brief) (Cal.App. 2 Dist. Jun 03, 1998) **Respondent's Brief on Appeal** (NO. B114162) \* \*
- 208 Virginia King SUPPLE, Petitioner, Defendant and Respondent, v. Lawrence KAUFMAN, Respondent, Plaintiff and Appellant., 1998 WL 34359080, \*34359080+ (Appellate Brief) (Cal.App. 2 Dist. May 21, 1998) **Respondent's Brief** (NO. B109039) \* \*
- 209 In Re Marriage of Schilling Rose SCHILLING, Petitioner-Respondent, v. Gerard J. SCHILLING, Respondent-Appellant., 1998 WL 34354074, \*34354074+ (Appellate Brief) (Cal.App. 2 Dist. May 12, 1998) **Respondent's Opening Brief** (NO. B109706) \* \*
- 210 In re the Marriage of: Bernard H. BULLER, Petitioner, Respondent, v. Margaret A. BULLER, Respondent, Appellant., 1998 WL 34351580, \*34351580 (Appellate Brief) (Cal.App. 2 Dist. Apr 24, 1998) **Appellant's Opening Brief** (NO. B113213) \* \*
- 211 In Re Marriage of Schilling Rose SCHILLING, Petitioner-Respondent, v. Gerard J. SCHILLING, Respondent-Appellant., 1998 WL 34354075, \*34354075+ (Appellate Brief) (Cal.App. 2 Dist. Mar 24, 1998) **Appellant's Opening Brief** (NO. B109706) \* \* \*
- 212 Estate of Victor G. CARTHRAE, Decedent & Respondent, v. Sarah E. CARTHRAE, Defendant & Appellant., 1998 WL 34357966, \*34357966+ (Appellate Brief) (Cal.App. 2 Dist. Mar 09, 1998) **Appellant's Opening Brief** (NO. B114162) \* \*

- 213 Earl JENKINS, Petitioner/Appellant, Norma JENKINS, Respondent/Respondent., 1997 WL 33800778, \*33800778+ (Appellate Brief) (Cal.App. 2 Dist. May 22, 1997) **Appellant's Opening Brief** (NO. B108927) \* \*
- 214 Jean E. KOLL, Petitioner & Respondent, v. Steven R. KOLL, Respondent & Appellant., 1997 WL 33816534, \*33816534+ (Appellate Brief) (Cal.App. 2 Dist. Jan 27, 1997) **Respondent's Reply Brief** (NO. B095682) \* \* \*
- 215 Therese THOMAS, Petitioner and Respondent, v. Adly THOMAS, Respondent and Appellant., 1996 WL 34427746, \*34427746+ (Appellate Brief) (Cal.App. 2 Dist. Nov 22, 1996) **Respondent's Brief** (NO. B084215) \* \* \* **HN: 2,4 (Cal.Rptr.)**
- 216 In re the marriage of Pamela Miller RIDLEY, Petitioner/Respondent, Michael Patrick Ridley, Respondent/Appellate., 1996 WL 34428124, \*34428124+ (Appellate Brief) (Cal.App. 2 Dist. Sep 23, 1996) **Appellant's Reply Brief** (NO. B091211) \* \* \* **HN: 1,4 (Cal.Rptr.)**
- 217 In re Marriage of Petitioner: Pamela Miller RIDLEY Respondent, Respondent: Michael Patrick Ridley, Appellant., 1996 WL 34428125, \*34428125+ (Appellate Brief) (Cal.App. 2 Dist. Aug 23, 1996) **Respondent's Brief** (NO. B091211) " \* \* \* \* **HN: 1,2,4 (Cal.Rptr.)**
- 218 In re the Marriage of Gerald L. GIBESON and Joyce Ann Gibeson. Gerald L. Gibeson, Appellant, v. Joyce A. Gibeson, Respondent., 2009 WL 4027855, \*4027855+ (Appellate Brief) (Cal.App. 3 Dist. Nov 12, 2009) **Respondent's Brief** (NO. C060843) \* \*
- 219 In re the Marriage of Gerald L. GIBESON and Joyce Ann Gibeson. Gerald Gibeson, Appellant, v. Joyce Ann Gibeson, Respondent., 2009 WL 4027854, \*4027854 (Appellate Brief) (Cal.App. 3 Dist. Oct 19, 2009) **Appellant's Opening Brief** (NO. C060843) \* \*
- 220 Gerald GIBESON, Petitioner/Appellant, v. Joyce Ann GIBESON, Respondent/Respondent., 2009 WL 3563270, \*3563270 (Appellate Brief) (Cal.App. 3 Dist. Sep 25, 2009) **Appellant's Opening Brief** (NO. C060843) \* \*
- 221 Lashkar SINGH, Appellant, v. Lalita Kiran SINGH, Respondent., 2007 WL 3011384, \*3011384+ (Appellate Brief) (Cal.App. 3 Dist. Sep 09, 2007) **Appellant's Opening Brief** (NO. C055735) \* \* \*
- 222 Larry C. KOSHMAN, Petitioner/Appellant, v. Patricia L. KOSHMAN, Respondent., 2003 WL 23154178, \*23154178+ (Appellate Brief) (Cal.App. 3 Dist. Jun 30, 2003) **Appellant's Opening Brief** (NO. C043370) \* \* \* \* **HN: 4 (Cal.Rptr.)**
- 223 In re the Marriage of Marcia and John SPALETTA. Marcia SPALETTA, Petitioner and Appellant, v. John SPALETTA, Respondent and Respondent., 2001 WL 34119365, \*34119365+ (Appellate Brief) (Cal.App. 3 Dist. Aug 09, 2001) **Appellant's Opening Brief** (NO. C037968) \* \* **HN: 4 (Cal.Rptr.)**
- 224 Virginia Ann FISHER, Plaintiff/Respondent, v. Thomas James FISHER, Defendant/Appellant., 2000 WL 34408328, \*34408328+ (Appellate Brief) (Cal.App. 3 Dist. Dec 19, 2000) **Appellant's Reply Brief** (NO. C035815) \* \*
- 225 Irving H. STORER, Individually and as Trustee for the Irving H. Storer and Elsie P. Storer Family Trust, Plaintiff/Cross-Defendant - Respondent, v. Richard METZGER, Donna Metzger, husband and wife, Defendant/Cross-Complainants - Appellants, v. Janice Wilson and Irving H. Storer, Cross-Defendants - Respondents., 1999 WL 33893588, \*33893588+ (Appellate Brief) (Cal.App. 3 Dist. Dec 11, 1999) **Appellants Metzgers' Opening Brief** (NO. C033606) \* \*

- 226 Jane STONESIFER, Appellant, v. John STONESIFER, Respondent., 1999 WL 33893363, \*33893363+ (Appellate Brief) (Cal.App. 3 Dist. Jun 30, 1999) **Appellant's Opening Brief** (NO. C032072) ★ ★ HN: 2 (Cal.Rptr.)
- 227 Sharon STREEPER (Joseph), Petitioner and Respondent, v. William E. STREEPER, Respondent and Appellant., 1999 WL 33892992, \*33892992+ (Appellate Brief) (Cal.App. 3 Dist. Jun 04, 1999) **Brief of Respondent Sharon Streeper (Joseph)** (NO. C030701) " ★ ★ ★
- 228 In re THE MARRIAGE OF Sharon MCDANIEL, Petitioner/Respondent, Lonzo Daniel MCDANIEL, Respondent/Appellant., 1999 WL 33892948, \*33892948+ (Appellate Brief) (Cal.App. 3 Dist. Mar 05, 1999) **Appellant's Reply Brief** (NO. C030541) ★ ★ ★ HN: 4 (Cal.Rptr.)
- 229 Sharon Louise MCDANIEL, Petitioner/Respondent, v. Lonzo Darrel MCDANIEL, Respondent/Appellant., 1999 WL 33892947, \*33892947+ (Appellate Brief) (Cal.App. 3 Dist. Feb 16, 1999) **Respondent's Brief** (NO. C030541) ★ ★ ★ ★ HN: 2,4 (Cal.Rptr.)
- 230 Norma B. KURE, Appellant, v. Jack R. KURE, Respondent., 1998 WL 34339866, \*34339866+ (Appellate Brief) (Cal.App. 3 Dist. Apr 23, 1998) **Appellant's Opening Brief** (NO. C028479) ★ ★ ★ ★
- 231 Jack R. KURE, Respondent, v. Norma B. KURE, Appellant., 1998 WL 34339867, \*34339867+ (Appellate Brief) (Cal.App. 3 Dist. Apr 23, 1998) **Appellant's Opening Brief** (NO. C028479) ★ ★ ★ ★
- 232 In Re Marriage of: Mitzi CHRISTOPHER, Respondent, v. Steven Don CHRISTOPHER, Appellant., 1998 WL 34341439, \*34341439 (Appellate Brief) (Cal.App. 3 Dist. Feb 19, 1998) **Appellant's Opening Brief** (NO. C026449) ★ HN: 4 (Cal.Rptr.)
- 233 In re the Marriage of Sharon MCDANIEL, Petitioner/Respondent, Lonzo Daniel MCDANIEL, Respondent/Appellant., 1995 WL 17213571, \*17213571+ (Appellate Brief) (Cal.App. 3 Dist. Aug 04, 1995) **Appellant's Opening Brief** (NO. C030541) ★ ★ ★ ★
- 234 Daniel Todd BETZ, Petitioner/Appellant, v. Lisa Renee BETZ, Respondent/Respondent., 2009 WL 3563582, \*3563582+ (Appellate Brief) (Cal.App. 4 Dist. Sep 25, 2009) **Appellant's Opening Brief** (NO. E047838) ★ ★
- 235 Carolina CARSON, Petitioner and Respondent, v. Michael M. CARSON, Respondent and Appellant., 2009 WL 1094022, \*1094022+ (Appellate Brief) (Cal.App. 4 Dist. Feb 27, 2009) **Appellants Reply Brief** (NO. D053025) ★ ★
- 236 Melody L. COCHRAN, Plaintiff and Appellant, v. Anthony DELONAY, et. al., Defendants., 2009 WL 899883, \*899883+ (Appellate Brief) (Cal.App. 4 Dist. Feb 24, 2009) **Appellant's Opening Brief** (NO. B210747) ★ ★
- 237 Harvey W. KAMENS, Respondent, v. Karen S. STRAUSMAN, Appellant., 2008 WL 6137831, \*6137831+ (Appellate Brief) (Cal.App. 4 Dist. Sep 26, 2008) **Appellant's Opening Brief** (NO. G040664) ★ ★ ★
- 238 Seana MONTES, Petitioner, respondent, v. Joshua PARKER, Respondent appellant., 2008 WL 2329807, \*2329807 (Appellate Brief) (Cal.App. 4 Dist. May 05, 2008) **Appellant's Reply Brief** (NO. D051423) ★ ★
- 239 In Re Marriage of Denise BULLARD and Christopher Bullard Denise Bullard, Respondent, v. Christopher BULLARD, Appellant., 2008 WL 2110931, \*2110931+ (Appellate Brief) (Cal.App.

- 4 Dist. Apr 01, 2008) **Appellant's Opening Brief** (NO. G039139) \* \* \* **HN: 4** (Cal.Rptr.)
- 240 **In re the Marriage of: Seana (Parker) MONTES, Respondent/Cross-Appellant, Joshua PARKER, Appellant., 2008 WL 1855305, \*1855305+ (Appellate Brief) (Cal.App. 4 Dist. Feb 15, 2008) Respondent/Cross-Appellant's Brief** (NO. D050979) " \* \* \* \* **HN: 1,3,4** (Cal.Rptr.)
- 241 **Imelda T. POSTLE, Respondent, v. James M. POSTLE, Sr, Appellant., 2007 WL 5878980, \*5878980 (Appellate Brief) (Cal.App. 4 Dist. Dec 02, 2007) Appellant's Opening Brief (AOB)** (NO. E040968) \* \*
- 242 **In re Marriage of Antoinette and Alfred C. HIPP., Antionette V. Hipp, Appellant / Cross-Respondent, v. Alfred C. Hipp, Respondent / Cross-Appellant., 2007 WL 4520582, \*4520582+ (Appellate Brief) (Cal.App. 4 Dist. Nov 26, 2007) Respondent's Brief & Cross-Appellant's Opening Brief** (NO. G038130) \* \* \* \* **HN: 2,4** (Cal.Rptr.)
- 243 **In re the Marriage of: Imelda T. POSTLE and James M. Postle, Sr. Imelda T. Postle, Respondent, v. James M. Postle, Sr, Appellant., 2007 WL 3068771, \*3068771 (Appellate Brief) (Cal.App. 4 Dist. Aug 31, 2007) Appellant's Opening Brief (AOB)** (NO. E040968) \* \*
- 244 **Alfred C. HIPP, Respondent, v. Antoinette V. HIPP, Appellant., 2007 WL 2733177, \*2733177+ (Appellate Brief) (Cal.App. 4 Dist. Jul 17, 2007) Appellant's Opening Brief** (NO. G038130) \* \* \* \*
- 245 **Margaret B. MORGAN, Appellant and Cross-Respondent, v. Ralph P. MORGAN, Respondent and Cross-Appellant., 2007 WL 5095212, \*5095212+ (Appellate Brief) (Cal.App. 4 Dist. Jun 26, 2007) Appellant's Opening Brief** (NO. G037432) \* \* \* **HN: 4** (Cal.Rptr.)
- 246 **Mark MAGRUDER, Petitioner and Appellant, v. Jill MAGRUDER, Respondent., 2007 WL 2321493, \*2321493+ (Appellate Brief) (Cal.App. 4 Dist. Jun 14, 2007) Appellant's Opening Brief** (NO. G037337) \* \* \* \*
- 247 **In re Marriage of Tinette HOLTON, Plaintiff/Respondent; Frank D. Holton, Defendant/Appellant., 2006 WL 731963, \*731963+ (Appellate Brief) (Cal.App. 4 Dist. Jan 20, 2006) Appellant's Reply Brief** (NO. E037384) \* \* \* **HN: 4** (Cal.Rptr.)
- 248 **In re Marriage of Tinette HOLTON, Plaintiff/Respondent, Frank D. Holton, Defendant/Appellant., 2005 WL 3147595, \*3147595+ (Appellate Brief) (Cal.App. 4 Dist. Sep 06, 2005) Appellant's Opening Brief** (NO. E037384) " \* \* \* \* **HN: 4** (Cal.Rptr.)
- 249 **Daniel HENRY, Appellant, v. Marcia HENRY, Respondent., 2005 WL 2043164, \*2043164+ (Appellate Brief) (Cal.App. 4 Dist. Jun 30, 2005) Appellant's Opening Brief** (NO. G035104) \* \* \* **HN: 4** (Cal.Rptr.)
- 250 **Denise VIGNEAU, Petitioner/Respondent, v. Gregory VIGNEAU, Defendant/Appellant., 2004 WL 1061168, \*1061168+ (Appellate Brief) (Cal.App. 4 Dist. Feb 17, 2004) Appellant's Reply Brief** (NO. E033406) \* \* \* **HN: 4** (Cal.Rptr.)
- 251 **In Re the Marriage of: Harvey KAMENS, Respondent. Karen S. STRAUSMAN, Appellant., 2004 WL 5676042, \*5676042+ (Appellate Brief) (Cal.App. 4 Dist. 2004) Respondent's Brief** (NO. G040664) \* \* \*
- 252 **Denise VIGNEAU, Petitioner/Respondent, v. Gregory VIGNEAU, Defendant/Appellant., 2003 WL 23211190, \*23211190+ (Appellate Brief) (Cal.App. 4 Dist. Dec 10, 2003) Appellant's Opening Brief** (NO. E033406) \* \* \* **HN: 4** (Cal.Rptr.)
- 253 **Diane HUFSTEDLER, Petitioner and Respondent, v. Steven HUFSTEDLER, Respondent and**

- Appellant., 2003 WL 23148071, \*23148071+ (Appellate Brief) (Cal.App. 4 Dist. Jun 06, 2003) **Respondent's Brief** (NO. G031245) \* \* \* \* **HN: 2,4 (Cal.Rptr.)**
- 254 Diane HUFSTEDLER, Petitioner and Respondent, v. Steven HUFSTEDLER, Respondent and Appellant., 2003 WL 23148072, \*23148072+ (Appellate Brief) (Cal.App. 4 Dist. Feb 15, 2003) **Appellant's Opening Brief** (NO. G031245) \* \* \* \* **HN: 4 (Cal.Rptr.)**
- 255 Mark MAGRUDER, Appellant, v. Jill MAGRUDER, Respondent., 2003 WL 25601313, \*25601313+ (Appellate Brief) (Cal.App. 4 Dist. 2003) **Respondent's Brief** (NO. G037337) \* \* \*
- 256 In re THE MARRIAGE OF Joni BENJAMIN and Richard Benjamin, Jr. Joni Benjamin, Petitioner and Respondent, v. Richard Benjamin, Jr., Respondent and Appellant., 2000 WL 34409442, \*34409442+ (Appellate Brief) (Cal.App. 4 Dist. Jun 05, 2000) **Appellant's Opening Brief** (NO. D034271) " \* \* \* **HN: 4 (Cal.Rptr.)**
- 257 In re the Marriage of Sharon KELLY, Petitioner and Appellant, v. James KELLY, Respondent., 1999 WL 33743132, \*33743132+ (Appellate Brief) (Cal.App. 4 Dist. Jul 28, 1999) **Appellant's Reply Brief** (NO. G023421) \* \* **HN: 4 (Cal.Rptr.)**
- 258 Richard PICK, Petitioner/Respondent, Barbara YOUNG, Respondent/Appellant; Barbara Young, Plaintiff, v. Richard A. Pick, et al., Defendants., 1999 WL 34853603, \*34853603+ (Appellate Brief) (Cal.App. 4 Dist. Jun 03, 1999) **Respondent's Brief** (NO. G021355) \* \* \* **HN: 4 (Cal.Rptr.)**
- 259 In re the Marriage of Sharon KELLY, Petitioner and Appellant, v. James KELLY, Respondent., 1999 WL 33743134, \*33743134+ (Appellate Brief) (Cal.App. 4 Dist. May 07, 1999) **Appellant's Opening Brief** (NO. G023421) \* \* **HN: 4 (Cal.Rptr.)**
- 260 In re THE MARRIAGE OF NOVAK. Petitioner: Mickey E. Novak, Respondent, v. Respondent: Carole Novak, Appellant., 1999 WL 33895147, \*33895147+ (Appellate Brief) (Cal.App. 4 Dist. Mar 01, 1999) **Appellant's Reply Brief** (NO. D027698) \* \* **HN: 4 (Cal.Rptr.)**
- 261 In re Marriage of: Petitioner: Felix MARTIN, Respondent: Loretta MARTIN. Felix MARTIN, Appellant, Loretta MARTIN, Respondent., 1998 WL 34192034, \*34192034+ (Appellate Brief) (Cal.App. 4 Dist. Dec 14, 1998) **Respondent's Brief** (NO. G023420) \* \* \* **HN: 4 (Cal.Rptr.)**
- 262 Felix MARTIN, Petitioner and Appellant, v. Loretta MARTIN, Respondent and Respondent., 1998 WL 34345727, \*34345727+ (Appellate Brief) (Cal.App. 4 Dist. Aug 24, 1998) **Appellant's Opening Brief** (NO. G023420) \* \* \*
- 263 In re the Marriage of: Frances Carol DITTY, Petitioner/Respondent and Cross-Appellant, v. John Alexander DITTY, Respondent/Appellant and Cross-Respondent., 1998 WL 34191476, \*34191476+ (Appellate Brief) (Cal.App. 4 Dist. Aug 07, 1998) **Cross-Appellant's Reply Brief** (NO. G021997) \* \* \* \* **HN: 2,4 (Cal.Rptr.)**
- 264 In re Marriage of Ditty, Frances C. DITTY, Appellant/Respondent, v. John A. DITTY, Respondent/Appellant., 1998 WL 34191475, \*34191475+ (Appellate Brief) (Cal.App. 4 Dist. Jul 19, 1998) **Respondent's Brief on Cross-Appeal** (NO. G021997) \* \* \* \* **HN: 1,2,4 (Cal.Rptr.)**
- 265 In Re Marriage of: Donald LEJEUNE, Petitioner/Appellant, Joan Lejeune, Respondent-Respondent., 1998 WL 34316782, \*34316782+ (Appellate Brief) (Cal.App. 4 Dist. Mar 24, 1998) **Appellant's Reply Brief** (NO. G020779) \* \* \* **HN: 1,3 (Cal.Rptr.)**
- 266 In re the Marriage of: Frances Carol DITTY, Petitioner/Respondent and Cross-Appellant, v. John

- Alexander DITTY, Respondent/Appellant and Cross-Respondent, 1998 WL 34191473, \*34191473+ (Appellate Brief) (Cal.App. 4 Dist. Mar 17, 1998) **Respondent's Brief** (NO. G021997) \* \* \* \* **HN: 4 (Cal.Rptr.)**
- 267 In re the Marriage of: Frances Carol DITTY, Petitioner/Respondent and Cross-Appellant, v. John Alexander DITTY, Respondent/Appellant and Cross-Respondent., 1998 WL 34191474, \*34191474+ (Appellate Brief) (Cal.App. 4 Dist. Mar 17, 1998) **Cross-Appellant's Opening Brief** (NO. G021997) " \* \* \* \* **HN: 1,3,4 (Cal.Rptr.)**
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- 269 In Re Marriage Of: Donald LEJEUNE, Petitioner-Appellant, v. Joan Lejeune, Respondent-Respondent., 1997 WL 33787620, \*33787620+ (Appellate Brief) (Cal.App. 4 Dist. Oct 20, 1997) **Appellant's Opening Brief** (NO. G020779) " \* \* \* \* **HN: 4 (Cal.Rptr.)**
- 270 Stephen WEISS, Appellant and Respondent, v. KAREN WEISS, Respondent and Petitioner., 1997 WL 33785915, \*33785915+ (Appellate Brief) (Cal.App. 4 Dist. Oct 07, 1997) **Appellant's Reply Brief** (NO. G020781) \* \* **HN: 1 (Cal.Rptr.)**
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- 273 In Re the Marriage of: Petitioner: Matthew B. LUXENBERG, Appellant, Respondent: Syndee Luxenberg, Respondent., 1997 WL 33785852, \*33785852+ (Appellate Brief) (Cal.App. 4 Dist. Jul 14, 1997) **Appellant's Opening Brief** (NO. G020639) \* \* **HN: 2,4 (Cal.Rptr.)**
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- 275 Anne Marie KUNKLE, Petitioner/Respondent, v. Lawrence F. KUNKLE, Respondent/Appellant., 1997 WL 33785241, \*33785241+ (Appellate Brief) (Cal.App. 4 Dist. Jul 1997) **Appellant's Opening Brief** (NO. E019729) \* \* \* \* **HN: 4 (Cal.Rptr.)**
- 276 Stephen WEISS, Appellant and Respondent, v. Karen WEISS, Respondent and Petitioner., 1997 WL 33787623, \*33787623+ (Appellate Brief) (Cal.App. 4 Dist. Jun 23, 1997) **Appellant's Opening Brief** (NO. G020781) \* \*
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- (NO. F053481) \* \* HN: 4 (Cal.Rptr.)
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- 281 Robert PAPA ZIAN, Petitioner and Appellant, v. Mary Lee PAPA ZIAN, Respondent and Respondent., 2005 WL 3740162, \*3740162+ (Appellate Brief) (Cal.App. 5 Dist. Nov 17, 2005) **Appellant's Reply Brief / Response to Cross-Appellant's Opening Brief** (NO. F046535) \* \* \* \* HN: 1,4 (Cal.Rptr.)
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- 283 In re the Marriage of Larry E. CASON, Petitioner and Respondent, Janet L. CASON, Respondent and Appellant., 2003 WL 23139878, \*23139878 (Appellate Brief) (Cal.App. 5 Dist. Sep 29, 2003) **Appellant's Reply Brief** (NO. F042146) \* \*
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- 287 In re the Marriage of: Robert PAPA ZIAN, Petitioner/ Appellant/Cross-Respondent, Mary Lee PAPA ZIAN, Respondent/Respondent/Cross-Appellant., 2002 WL 32167485, \*32167485+ (Appellate Brief) (Cal.App. 5 Dist. Sep 13, 2002) **Respondent/Respondent/Cross-Appellant's Reply Brief on Appeal** (NO. F037053) \* \* \* \* HN: 4 (Cal.Rptr.)
- 288 Robert PAPA ZIAN, Petitioner and Appellant, v. Mary Lee PAPA ZIAN, Respondent and Respondent., 2001 WL 34115442, \*34115442+ (Appellate Brief) (Cal.App. 5 Dist. Oct 01, 2001) **Appellant's Opening Brief** (NO. F037053) \* \* \* \* HN: 2,4 (Cal.Rptr.)
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- 291 In Re the Marriage of Sepehrdad Sima SEPEHRDAD, Respondent, v. Abbas SEPEHRDAD, Appellant., 2007 WL 2964147, \*2964147+ (Appellate Brief) (Cal.App. 6 Dist. Sep 06, 2007) **Respondent's Brief** (NO. H031094) \* \* \*
- 292 In re MARRIAGE OF Abbas SEPEHRDAD, Appellant and Respondent, Sima SEPEHRDAD,

- Respondent and Petitioner., 2007 WL 2733122, \*2733122+ (Appellate Brief) (Cal.App. 6 Dist. Jul 25, 2007) **Appellant's Opening Brief** (NO. H031094) \* \* \*
- 293 In re the Marriage of Suzanne P. and Gregory M. GALLOWAY. Gregory M. Galloway, Appellant, v. Suzanne P. Galloway, Respondent., 2007 WL 841850, \*841850+ (Appellate Brief) (Cal.App. 6 Dist. Feb 20, 2007) **Appellant's Opening Brief** (NO. H030371) \* \* HN: 4 (Cal.Rptr.)
- 294 Dave TAUSHECK, Appellant, v. Patty TAUSHECK, Respondent., 2005 WL 1305178, \*1305178+ (Appellate Brief) (Cal.App. 6 Dist. Apr 18, 2005) **Respondent's Brief** (NO. H027832) \* \* \* HN: 4 (Cal.Rptr.)
- 295 Dave TAUSHECK, Respondent and Appellant, v. Patty TAUSHECK. Petitioner and Respondent., 2005 WL 1048266, \*1048266+ (Appellate Brief) (Cal.App. 6 Dist. Mar 21, 2005) **Appellant's Opening Brief** (NO. H027832) \* \* \* \* HN: 2,4 (Cal.Rptr.)
- 296 Virginia Sue ROSSI, Appellant, v. Henry ROSSI, Respondent., 2004 WL 2542808, \*2542808+ (Appellate Brief) (Cal.App. 6 Dist. Sep 06, 2004) **Respondent's Brief** (NO. H026944) \* \* \* HN: 4 (Cal.Rptr.)
- 297 In re the marriage of Eulalia SILVA, Petitioner and Respondent, v. Manuel SILVA, Respondent and Appellant., 2001 WL 34129454, \*34129454+ (Appellate Brief) (Cal.App. 6 Dist. Nov 15, 2001) **Appellant's Opening Brief** (NO. H023022) " \* \* \* \* HN: 1,4 (Cal.Rptr.)
- 298 In Re the Marriage of Vida TABIBIAN, Petitioner and Appellant, v. Parviz TABIBIAN, Respondent and Respondent., 2001 WL 34155696, \*34155696+ (Appellate Brief) (Cal.App. 6 Dist. May 11, 2001) **Respondent's Brief** (NO. H021361) \* \* HN: 4 (Cal.Rptr.)
- 299 In re the Marriage of: Vida TABIBIAN, Petitioner and Appellant, Parviz TABIBIAN, Respondent and Respondent., 2000 WL 34033089, \*34033089+ (Appellate Brief) (Cal.App. 6 Dist. Dec 12, 2000) **Appellant's Opening Brief** (NO. H021361) \* \* HN: 4 (Cal.Rptr.)
- 300 In re Marriage of Silvia JOVEL and Rafael Jovel, Silvia JOVEL, Petitioner and Respondent, v. Rafael JOVEL, Respondent and Appellant, v. BAY VIEW FEDERAL SAVINGS AND LOAN ASSOCIATION, Bay View Auxiliary Corporation, and Edgar Castro, Claimants and Respondents., 1998 WL 34185501, \*34185501+ (Appellate Brief) (Cal.App. 6 Dist. Jan 20, 1998) **Corrected Appellant's Opening Brief** (NO. H016587) \* \* HN: 4 (Cal.Rptr.)
- 301 In re Marriage of Silvia JOVEL and Rafael Jovel, Silvia JOVEL, Petitioner and Respondent, v. Rafael JOVEL, Respondent and Appellant, v. BAY VIEW FEDERAL SAVINGS AND LOAN ASSOCIATION, Bay View Auxiliary Corporation, and Edgar Castro, Claimants and Respondents., 1997 WL 33628778, \*33628778+ (Appellate Brief) (Cal.App. 6 Dist. Dec 23, 1997) **Appellant's Opening Brief** (NO. H016587) \* \* HN: 4 (Cal.Rptr.)
- 302 In Re the Marriage of Petitioner: Debbie BRANAGAN, v. Respondent: Thomas J. BRANAGAN. Debbie BRANAGAN, Appellant, v. Thomas J. BRANAGAN, Respondent., 1997 WL 33628839, \*33628839+ (Appellate Brief) (Cal.App. 6 Dist. Mar 21, 1997) **Respondent's Brief** (NO. H015779) \* \* \* HN: 4 (Cal.Rptr.)

#### Trial Court Documents (U.S.A.)

#### Trial Motions, Memoranda and Affidavits

- 303 Mary THEURER, Plaintiff, v. KOLODNY & ANTEAU, Steven Kolodny, Does 1 through 100, Defendants; Kolodny & Anteau, A Partnership of Professional Corporations, Cross-Complainant, v. Mary Theurer; Does 101 through 110, inclusive, Cross-Defendants., 2007 WL 5493255, \*5493255+ (Trial Motion, Memorandum and Affidavit) (Cal.Superior Aug 23, 2007) **Defendants Kolodny & Anteau and Stephen A. Kolodny's Notice of Motion and Motion for Summary Adjudication of Issues; Memorandum of Points and Authorities and Declaration of Gabrielle M. Jackson** (NO. BC328220) ★ ★ ★
- 304 Edwin G. ZALIS, M.D., Plaintiff, v. Allan ROSENBLUTH, M.D.; Richard F. Pego, M.D.; Comprehensive Cardiology Consultants, a Medical Group, Inc.; Cardiology Practice Medical Group, Inc., Defendants., 2002 WL 34116619, \*34116619+ (Trial Motion, Memorandum and Affidavit) (Cal.Superior Dec 27, 2002) **Defendants' Notice of and Motions for Summary Judgment and/or Summary Adjudication, and Memorandum of Points and Authorities in Support Thereof** (NO. BC268454) ★ ★
- 305 HARRIMAN JONES MEDICAL GROUP, A Professional Corporation, a California corporation, Plaintiff, v. Sabrina HARPER, David Gorelick, Nayyer Ali; and Does 1 Through 20, inclusive, Defendants; Sabrina Harper, David Gorelick, Nayyer Ali, Cross-Claimants, v. Harriman Jones Medical Group, A Professional Corporation, a California corporation; and Does 1 Through 20, inclusive, Cross-Defendants., 2000 WL 35493433, \*35493433 (Trial Motion, Memorandum and Affidavit) (Cal.Superior Sep 14, 2000) **Reply Memorandum of Points and Authorities in Support of Defendants' and Cross-Claimants' Motion for Summary Judgment** (NO. BC223929) ★ ★

#### **Trial Transcripts**

- 306 Mary C. THEURER, Petitioner-Appellant, v. Michael C. THEURER, Defendant-Respondent., 2005 WL 6024470, \*6024470 (Trial Transcript) (Cal.Superior May 06, 2005) **Final Argument Made by Mr. Lipton** (NO. BD278354) ★ ★ HN: 4 (Cal.Rptr.)

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**C**  
In re the Marriage of LONNIE and BETTY JEFFRIES.  
LONNIE JEFFRIES, Respondent,  
v.  
BETTY JEFFRIES, Appellant.  
No. E006668.

Court of Appeal, Fourth District, Division 2, California.  
Mar. 14, 1991.

## SUMMARY

In dissolution of marriage proceedings the trial court, in its division of community property, reduced the total value of the community property awarded to the husband as his separate property by an amount for credits for advances made by the husband for house payments while the house was used exclusively by the wife. The trial court also awarded to the wife as her separate property a use value attributed to her exclusive occupation of the residence after separation. Under that division, because the overall value of the property to be awarded to the husband exceeded that awarded to the wife, the trial court divided that difference in half and ordered the husband to make an equalizing payment to the wife. The wife appealed. (Superior Court of San Bernardino County, No. OFL32434, Roberta A. McPeters, Temporary Judge. <sup>FN\*</sup>)

The Court of Appeal affirmed, holding the trial court did not err in its allocation of charges and credits since, prior to such adjustments having been made in the division of the community estate, the wife had both the full benefit of the exclusive possession of the marital home during the period of time in question and the full benefit of the husband's having paid the home loan payments out of his separate earnings during that time.

<sup>FN\*</sup> Pursuant to California Constitution, article VI, section 21. (Opinion by Timlin,

J., with Dabney, Acting P. J., and Hollenhorst, J., concurring.)

## HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Dissolution of Marriage; Separation § 54--Division of Community and Quasi-community Property--Additional Award or Offset for Purpose of Restitution--House Payment and Usage Allocation.

In dividing community property in a dissolution proceeding, the trial court did not err in reducing the total value of community property awarded to the husband as his separate property by an amount as credits for advances he made for house payments during separation while the house was used exclusively by the wife, and in awarding to the wife as her separate property the use value attributed to that exclusive occupation. It was entirely equitable that the husband should have benefited both from the allocation of credits and charges since, prior to those "adjustments" having been made in the division of the community estate, the wife had had both the full benefit of the exclusive possession of the marital home during the time in question and the full benefit of the husband's having paid the home loan payments out of his separate earnings.

[See Cal.Jur.3d, Family Law, § 779; 11 Witkin, Summary of Cal. Law (9th ed. 1990) Community Property, § 192 et seq.]

(2) Dissolution of Marriage; Separation § 54--Division of Community and Quasi-community Property--Additional Award or Offset For Purpose of Restitution--House Payment Credits and Usage Charges.

A spouse who, after separation of the parties, uses earnings or other separate funds to pay preexisting community obligations should be reimbursed therefor out of the community property on dissolution. However, reimbursement should not be ordered where the payment on account of a preexisting

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community obligation constituted in reality a discharge of the paying spouse's duty to support the other spouse. The court also has authority to reimburse the community for the value of a party's exclusive use of the family residence between the date of separation and the date on which the community itself no longer holds an interest in the residence.

#### COUNSEL

Stuart A. Holmes for Appellant.

Maroney & Brandt and Barry Brandt for Respondent.

#### TIMLIN, J.

The instant appeal arises within the context of a marital dissolution proceeding under the Family Law Act (Civ. Code, § 4000 et \*550 seq.).<sup>FN1</sup> The dispute on appeal concerns, in particular, how best to characterize and account for various payments and usages made by one or the other of the spouses with respect to their marital home. We conclude that the trial court properly and equitably treated these payments and usages so as to achieve the statutorily mandated end of "divid[ing] the community estate of the parties equally." (§ 4800, subd. (a).) Consequently, we affirm the judgment in full.

FN1 Unless otherwise indicated, all statutory section-number citations refer to the Civil Code.

#### Facts

Lonnie and Betty Jeffries were married on September 5, 1971. Some 15 years and 2 months later, on November 14, 1986, they separated. On February 5, 1987, Lonnie filed a petition for the dissolution of his marriage to Betty.

From the date of separation until the marital home was sold 12 months later (on Nov. 9, 1987), Betty remained in exclusive possession of the marital home. At no time during this 12-month period did

Betty receive any direct spousal support payments from Lonnie. Lonnie had not agreed to make any such direct payments to Betty and no such payments had ever been ordered by the trial court.

In April 1987, Lonnie and Betty (through and with the advice of their respective counsel) entered into a written stipulation concerning, inter alia, the manner in which they were going to "make the monthly house payments" pending the dissolution of their marriage. Of particular interest here, paragraph "c" of Lonnie and Betty's stipulation provided: "c. In lieu of spousal support, the Petitioner [Lonnie] shall pay the first trust deed on the marital home located at 6759 Grant Court, Chino, California 91710 in the monthly amount of approximately \$1,580.39. [¶] (1) The responsibility for payment of this debt by the Petitioner shall commence May 1, 1987, and continue on the first day of each month thereafter or until the property is sold and the proceeds therefrom received by the parties or until further order of this court, whichever shall first occur. [¶] (2) It is further stipulated between the parties that the court shall retain jurisdiction over the characterization of these payments and hold further hearings as to what percentage, if any, the Petitioner shall be entitled to reimbursement for the payment of the first trust deed on the marital home."

By all accounts, Lonnie thereafter made the monthly payments on the first trust deed loan until the marital home was sold—a total of seven monthly payments—out of his postseparation separate property earnings. \*551

On May 16, 1988, a bifurcated judgment of dissolution of marriage was entered by the trial court—certain issues relating to the division of the community estate, the payment of permanent spousal support, and the payment of attorney's fees having been reserved for further judgment by the trial court. On June 24, 1988, these further issues were tried to the trial court and then submitted for judgment.

On June 29, 1988, the trial court issued its intended

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decision. In its intended decision, the trial court announced its intention to award a variety of items to Lonnie as his sole and separate property as well as its intention to reduce the total (overall) value of the community property being awarded to Lonnie as his separate property by \$9,063 as "credits for advances made by husband for house payments while house was used exclusively by wife (see prior discussion under paragraph 3)[.]"<sup>FN2</sup> The intended decision went on to announce the trial court's intention to award a variety of community property items to Betty as her sole and separate property. Among the property items thus tentatively awarded to Betty as her separate property was a \$21,600 use value attributed to her exclusive occupation of "the family residence from 11/86 through 11/87, 12 mos. reasonable rental value of residence used by wife (\$1,800.00 X 12 =; \$21,600.00)[.]"<sup>FN3</sup>

FN2 The trial court's reference to a "paragraph 3" is a reference to the third paragraph of the trial court's intended decision, which paragraph stated: "Counsel for both parties presented offers of proof with respect to the above stated issues as well as certain stipulations regarding the value and disposition of community property."

FN3 Although Betty has not launched a direct appellate challenge to the trial court's use of \$1,800 as the monthly fair rental value of the marital home, she has questioned the appropriateness of that figure at several points in her appellate briefs. Betty's questioning stance on this particular point is unpersuasive, however, in light of the fact that the record on appeal contains references to Betty's own testimony that the open market monthly fair rental value of the marital home was just that—\$1,800.

Under the intended division of property, the overall value of the property to be awarded to Lonnie exceeded the overall value of the property to be awarded to Betty. Thus, the trial court's intended decision went on to take the remaining difference between the overall value of the property to be awarded to Lonnie and the overall value of the property to be awarded to Betty, divided that difference in half, and ordered Lonnie to make a cash payment (an equalizing payment) to Betty of that "one-half of the difference."

On July 13, 1988, Betty filed a motion for reconsideration of that portion of the intended decision which addressed the above "house payment/usage" allocation or, in the alternative, for a new trial on that same basic issue. On October 12, 1988, the trial court held a hearing, took evidence and fully reconsidered that issue. On April 5, 1989, the trial court entered its further \*552 judgment on reserved issues, in which judgment the trial court determined the above "house payment/usage" issue in precisely the same manner as it had originally announced in its earlier intended decision.

(1a) Betty has appealed from the trial court's further judgment on reserved issues and has put forward, for all practical purposes, only one contention: The trial court abused its discretion under the Family Law Act by awarding Lonnie "house payment credits" while, at the same time, charging Betty with the *full* "use value" of the marital home from the date of separation to the date the home was sold. At first glance, there is some surface validity to Betty's argument—there is a quick tendency to view the trial court's "house payment/usage" allocation as having produced the net effect of a "double payment" by Betty of at least a portion of the monthly loan payments on the first trust deed during the time period in question. However, as we discuss below, a more thorough analysis of the allocation ordered by the trial court reveals its equitable correctness.

Additional facts will be referred to, as needed, in the discussion which follows.

#### Discussion

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At the outset, we acknowledge the fact that there is distinct legal authority for both the “payment credits” and the “usage charges” ordered by the trial court in this case.

(2) With respect to the “payment credits,” the seminal case of *In re Marriage of Epstein* (1979) 24 Cal.3d 76 [ 154 Cal.Rptr. 413, 592 P.2d 1165] holds that “ ‘a spouse who, after separation of the parties, uses earnings or other separate funds to pay preexisting community obligations should be *reimbursed therefor out of the community property* upon dissolution. However, ... [¶] reimbursement should not be ordered where the payment on account of a preexisting community obligation constituted in reality a discharge of the paying spouse's duty to support the other spouse ....’ ” (*Epstein, supra*, at pp. 84-85, quoting from (and adopting as its own view the quoted portion of) *In re Marriage of Smith* (1978) 79 Cal.App.3d 725, 747 [ 145 Cal.Rptr. 205], italics added.)

With respect to the “usage charges,” the case of *In re Marriage of Watts* (1985) 171 Cal.App.3d 366 [ 217 Cal.Rptr. 301] held that “the trial court erred in concluding that it had no authority to *reimburse the community* for the value of [a party's] exclusive use of the family residence ... between the date of separation and the date [on which the community itself no longer held an interest in the residence, which, in this case, was the date on which the marital home was sold].” (*Watts, supra*, at p. 374, italics added.) \*553

(1b) Betty's argument on appeal is that the trial court's allocation of *all* of the “*Epstein credits*” to Lonnie in conjunction with its allocation of *all* of the “*Watts charges*” to her constituted an unequal division of the community's assets. Betty is in error. It is important to note that both “*Epstein credits*” and “*Watts charges*” are, respectively, to be paid from or paid to *the community*. Inasmuch as both spouses have an equal interest in community assets (§ 5105), and in light of a trial court's obligation under the Family Law Act to divide community assets equally between the parties upon a dissolution

of the marriage (§ 4800, subd. (a)), it follows that the *net* effect of allocating “*Epstein credits*” and “*Watts charges*” in a division of community assets should be (1) the equal sharing of “*Epstein credits*” by both spouses and (2) the equal bearing of “*Watts charges*” by both spouses. As we demonstrate in some detail below, this is precisely what was accomplished by the trial court in this case.

We turn our attention first to the \$9,063 of “*Epstein credits*” which were credited to Lonnie by the trial court. <sup>FN4</sup> These were accounted for by the trial court by *subtracting* \$9,063 from the overall value of the portion of the \*554 community estate awarded to Lonnie as his separate property prior to any equalizing payment being made. To assess the net fiscal impact of this deduction, it is helpful to compare two hypothetical situations:

FN4 Although Betty has not directly raised an issue concerning spousal support pendente lite on appeal, her briefs before this court attempt to make much of the “fact” that the trial court's allocation of “*Epstein credits*” and “*Watts charges*” was especially egregious in light of Lonnie's failure to directly pay any such support to her. The record on appeal does not support Betty's argument in this regard. The record on appeal reveals:

(1) Lonnie originally petitioned the trial court for an allowance of \$13,376.85 in “*Epstein credits*”;

(2) Seven months of payments on the first trust deed loan (from May 1, 1987, the stipulated date on which Lonnie's obligation to make such payments began, to Nov. 1, 1987, the last payment date occurring prior to the sale of the marital home) would total \$11,063 (rounded to the nearest dollar); and

(3) The trial court awarded Lonnie \$9,063 in “*Epstein credits*.”

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The trial court clearly reviewed the merits of Lonnie's request for \$13,376.85 in "*Epstein* credits," disallowing some \$4,313.85 of the credits sought by Lonnie. Further, the fact that the difference between the amount of "*Epstein* credits" which were allowed to Lonnie (\$9,063) and the amount which Lonnie paid by stipulation on the first trust deed loan (\$11,063) was *exactly* a nice, round \$2,000 strongly suggests that the trial court offset Lonnie's first trust deed loan payments by \$2,000 of deemed "in lieu" payments of spousal support pendente lite. This view of the record is entirely consistent with the April 1987 stipulation of the parties that (a) Lonnie's first trust deed loan payments would be "in lieu" of spousal support payments and (b) the trial court would retain jurisdiction to determine the character of Lonnie's first trust deed loan payments as well as what percentage of those payments would be reimbursable to him.

There was no statement of decision requested of, or prepared by, the trial court under the authority of section 632 of the Code of Civil Procedure with respect to any particular contested issue of fact. If Betty had desired that the trial court set forth its calculations and reasons for the above payment allocations, she could have requested that a statement of decision be prepared as to that issue. Betty's failure to request such a statement operated as a waiver of such a statement; and a waiver of such a statement leaves us to presume on appeal that the trial court found all the facts necessary to support the judgment. (*In re Marriage of Hebring* (1989) 207 Cal.App.3d 1260, 1274 [255 Cal.Rptr. 488].)

(1) Assume a situation in which no "*Epstein* credits" have been allowed and in which the overall value of the community estate awarded to the hus-

band as his separate estate exceeds the overall value of the community estate awarded to the wife as her separate property by \$9,063. In such a case, the husband must make an equalizing payment of \$4,531.50 ( $\$9,063 / 2$ ) to the wife to arrive at an equal division of the community estate.

(2) Assume the same situation as above with the one difference that the trial court has allocated \$9,063 in "*Epstein* credits" to the husband. In this case, the overall value of the portion of the community estate awarded to the husband as his separate property will be reduced by \$9,063 and, thus, will be equal to that of the community estate awarded to the wife as her separate property. Inasmuch as the overall value of the two estates are equal, there is no need for the husband to make an equalizing payment to the wife.

Thus, in our case the *net* fiscal impact of Lonnie's having received \$9,063 in "*Epstein* credits" is that he is \$4,531.50 better off, and Betty is \$4,351.50 worse off, than would have been the case if those credits had not been allowed. This result is entirely consistent with the fact that Lonnie received his "*Epstein* credits" from *community* property-property in which both Lonnie and Betty had an equal interest.

We now turn our attention to the \$21,600 of "*Watts* charges" which were charged against Betty's separate property award by the trial court. These charges were accounted for by the trial court by *adding* the full amount of \$21,600 to the overall value of the community estate awarded to Betty as her separate property. In assessing the net fiscal impact of this allocation of "*Watts* charges," it is again helpful to compare two hypothetical situations:

(1) Assume a situation in which no "*Watts* charges" are allocated to the wife and in which the overall value of the community estate awarded to the husband as his separate property is \$21,600 more than that of the community estate awarded to the wife as her separate property. In such a case, the husband would be required to make an equalizing payment

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of \$10,800 (\$21,600 / 2) to the wife to achieve an equal division of the community estate.

(2) Assume the same situation as above with the one difference that the trial court has allocated \$21,600 in “*Watts* charges” to the wife’s separate \*555 property award. In this case, the overall value of the community estate awarded to the wife as her separate property is increased by \$21,600 and, thus, the two different separate property estates are equal in value. Consequently, the husband does not have to make an equalizing payment to the wife.

Thus, in our case the *net* fiscal impact of Betty’s having been charged with \$21,600 of “*Watts* charges” is that Lonnie is \$10,800 better off, and Betty is \$10,800 worse off, than would have been the case had those charges not been assessed against Betty. Again, this is entirely consistent with the fact that these charges were reimbursed to the *community estate*, an estate in which Lonnie and Betty had an equal interest, from Betty’s separate property award for the reasonable rental value of her exclusive use of the marital home after her separation from Lonnie.

By way of a final observation concerning the above analysis, we note that it is entirely equitable that Lonnie should have benefited in this case (at Betty’s expense) both from the trial court’s allocation of “*Epstein* credits” and from the trial court’s allocation of “*Watts* charges”: prior to such “adjustments” having been made in the division of the community estate, Betty had had both the full benefit of the exclusive possession of the marital home during the period of time in question and the full benefit of Lonnie’s having paid the first trust deed loan payments out of his separate earnings for seven months.

#### Disposition

The judgment appealed from is affirmed in full.

Dabney, Acting P. J., and Hollenhorst, J., concurred. \*556

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## KEYCITE

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- 105 Harvey W. KAMENS, Respondent, v. Karen S. STRAUSMAN, Appellant., 2008 WL 6137831, \*6137831+ (Appellate Brief) (Cal.App. 4 Dist. Sep 26, 2008) **Appellant's Opening Brief** (NO.

- G040664) \* \*
- 106 Seana MONTES, Petitioner, respondent, v. Joshua PARKER, Respondent appellant., 2008 WL 2329807, \*2329807 (Appellate Brief) (Cal.App. 4 Dist. May 05, 2008) **Appellant's Reply Brief** (NO. D051423) \* \*
- 107 In Re Marriage of Denise BULLARD and Christopher Bullard Denise Bullard, Respondent, v. Christopher BULLARD, Appellant., 2008 WL 2110931, \*2110931+ (Appellate Brief) (Cal.App. 4 Dist. Apr 01, 2008) **Appellant's Opening Brief** (NO. G039139) \* \* **HN: 6,7 (Cal.Rptr.)**
- 108 David WENGER, Appellant, v. CITY OF NEWPORT BEACH, Newport Beach Fire Department, Respondents., 2007 WL 2733175, \*2733175+ (Appellate Brief) (Cal.App. 4 Dist. Aug 14, 2007) **Respondents' Reply Brief** (NO. G038105) \* \*
- 109 Alfred C. HIPPE, Respondent, v. Antoinette V. HIPPE, Appellant., 2007 WL 2733177, \*2733177+ (Appellate Brief) (Cal.App. 4 Dist. Jul 17, 2007) **Appellant's Opening Brief** (NO. G038130) \* \*
- 110 Margaret B. MORGAN, Appellant and Cross-Respondent, v. Ralph P. MORGAN, Respondent and Cross-Appellant., 2007 WL 5095212, \*5095212+ (Appellate Brief) (Cal.App. 4 Dist. Jun 26, 2007) **Appellant's Opening Brief** (NO. G037432) \* \*
- 111 Mark MAGRUDER, Petitioner and Appellant, v. Jill MAGRUDER, Respondent., 2007 WL 2321493, \*2321493+ (Appellate Brief) (Cal.App. 4 Dist. Jun 14, 2007) **Appellant's Opening Brief** (NO. G037337) \* \*
- 112 Michael ABNEY, Appellant and Respondent, v. Anne KLOKOW, Respondent and Petitioner., 2007 WL 668542, \*668542+ (Appellate Brief) (Cal.App. 4 Dist. Feb 06, 2007) **Respondent's Brief** (NO. G037387) \* \* **HN: 4 (Cal.Rptr.)**
- 113 In re the marriage of Linda E. LUMSDAIME & Charles J. Lumsdaine; Linda E. Lumsdaine, Appellant, Charles J. Lumsdaine, Respondent., 2007 WL 921941, \*921941+ (Appellate Brief) (Cal.App. 4 Dist. Jan 18, 2007) **Respondent's Brief** (NO. G037461) \* \* **HN: 2,5 (Cal.Rptr.)**
- 114 Daniel HENRY, Appellant, v. Marcia HENRY, Respondent., 2005 WL 2043164, \*2043164+ (Appellate Brief) (Cal.App. 4 Dist. Jun 30, 2005) **Appellant's Opening Brief** (NO. G035104) \* \* **HN: 2,7 (Cal.Rptr.)**
- 115 In Re the Marriage of: Harvey KAMENS, Respondent. Karen S. STRAUSMAN, Appellant., 2004 WL 5676042, \*5676042+ (Appellate Brief) (Cal.App. 4 Dist. 2004) **Respondent's Brief** (NO. G040664) \* \* \*
- 116 Denise VIGNEAU, Petitioner/Respondent, v. Gregory VIGNEAU, Defendant/Appellant., 2003 WL 23211190, \*23211190+ (Appellate Brief) (Cal.App. 4 Dist. Dec 10, 2003) **Appellant's Opening Brief** (NO. E033406) \* **HN: 7 (Cal.Rptr.)**
- 117 In re the Marriage of RANDY and Michelle Buchmiller Randy E. Buchmiller, Petitioner and Respondent, v. Michelle R. Buchmiller, Respondent and Appellant., 2003 WL 22398681, \*22398681+ (Appellate Brief) (Cal.App. 4 Dist. Jan 23, 2003) **Opening Brief on Appeal** (NO. E031634) \* \* \* **HN: 2,5,7 (Cal.Rptr.)**
- 118 Donna DICKINSON, Plaintiff and Petitioner, v. Alan DICKINSON, Defendant and Appellant., 2002 WL 32155995, \*32155995 (Appellate Brief) (Cal.App. 4 Dist. Aug 12, 2002) **Appellants' Reply Brief** (NO. G030330) \* \*
- 119 In re the Marriage of: Petitioner: David Lowell PETERS, Respondent and Cross-Appellant, Re-

- spondent: Marilyn Ruth Sloan, Appellant and Cross-Respondent., 2002 WL 32150890, \*32150890+ (Appellate Brief) (Cal.App. 4 Dist. Aug 01, 2002) **Respondent's Brief** (NO. G029665) \* \* **HN: 1 (Cal.Rptr.)**
- 120 Kathleen GAFFNEY, Petitioner and Appellant, v. David FYFFE, Respondent and Respondent., 2002 WL 32147298, \*32147298+ (Appellate Brief) (Cal.App. 4 Dist. Jul 05, 2002) **Appellant's Opening Brief** (NO. G030502) \* \* **HN: 2 (Cal.Rptr.)**
- 121 Donna DICKINSON, Plaintiff and Petitioner, v. Alan DICKINSON, Appellant and Respondent., 2002 WL 32155993, \*32155993 (Appellate Brief) (Cal.App. 4 Dist. Apr 01, 2002) **Appellants' Opening Brief** (NO. G030330) \* \*
- 122 Timothy KEATING, Robert Wills and San Diego Police Officers Association, Plaintiffs/Appellants, v. SAN DIEGO CIVIL SERVICE COMMISSION and City of San Diego, Defendants/Respondents., 2001 WL 34132120, \*34132120+ (Appellate Brief) (Cal.App. 4 Dist. Oct 29, 2001) **Appellants' Reply Brief** (NO. D038301) \* \* **HN: 4 (Cal.Rptr.)**
- 123 Steven S. BROWN, Petitioner and Appellant, v. Karen E. BROWN, Respondent., 2001 WL 34144206, \*34144206+ (Appellate Brief) (Cal.App. 4 Dist. Mar 08, 2001) **Appellant's Opening Brief** (NO. E027447) \* \* **HN: 2,7 (Cal.Rptr.)**
- 124 Steven S. BROWN, Petitioner and Appellant, v. Karen E. BROWN, Respondent., 2001 WL 34144210, \*34144210+ (Appellate Brief) (Cal.App. 4 Dist. Mar 08, 2001) **Appellant's Opening Brief** (NO. E027447) \* \* **HN: 2,7 (Cal.Rptr.)**
- 125 Laura Marie SMITH, Petitioner/Respondent, v. David Ellison SMITH, Respondent/Appellant., 2000 WL 34033310, \*34033310+ (Appellate Brief) (Cal.App. 4 Dist. Sep 07, 2000) **Appellant's Opening Brief** (NO. G027267) \* \* **HN: 2 (Cal.Rptr.)**
- 126 In re THE MARRIAGE OF Joni BENJAMIN and Richard Benjamin, Jr. Joni Benjamin, Petitioner and Respondent, v. Richard Benjamin, Jr., Respondent and Appellant., 2000 WL 34409442, \*34409442+ (Appellate Brief) (Cal.App. 4 Dist. Jun 05, 2000) **Appellant's Opening Brief** (NO. D034271) " \* \* \* **HN: 5,6,7 (Cal.Rptr.)**
- 127 John Roland DAVIES, Jr. and Betty l. Davies, Appellants, v. Ed Gregory HOOKSTRATTEN, an individual; Aimee Hookstratten, an individual; Ed Gregory Hookstratten, Trustee of the Hookstratten Family Trust Dated August 28, 1996, Respondents., 2000 WL 34234292, \*34234292+ (Appellate Brief) (Cal.App. 4 Dist. Feb 01, 2000) **Appellants' Reply Brief** (NO. G025296) \* \* **HN: 4 (Cal.Rptr.)**
- 128 John Roland DAVIES, Jr. and Betty l. Davies, Appellants, v. Ed Gregory HOOKSTRATTEN, an individual; Aimee Hookstratten, an individual; Ed Gregory Hookstratten, Trustee of the Hookstratten Family Trust Dated August 28, 1996, Respondents., 2000 WL 34234365, \*34234365+ (Appellate Brief) (Cal.App. 4 Dist. Feb 01, 2000) **Appellants' Reply Brief** (NO. G025296) \* \* **HN: 4 (Cal.Rptr.)**
- 129 Lawrence R. STIDHAM, Plaintiff and Respondent, v. Margaret HUARTE, Defendant and Appellant., 2000 WL 34406181, \*34406181+ (Appellate Brief) (Cal.App. 4 Dist. Jan 25, 2000) **Respondent's Brief** (NO. E024445) \* \* **HN: 4 (Cal.Rptr.)**
- 130 John Roland DAVIES, Jr. And Betty L. Davies, Plaintiffs/Appellants, v. Ed Gregory HOOKSTRATTEN, an individual; Aimee Hookstratten, an individual; Ed Gregory Hookstratten, Trustee of the Hookstratten Family Trust Dated August 28, 1996; 739 Via Lido Soud, Lic, a California limited liability company; Kevin D. Weeda, an individual; and Does 1 through 25, Inclusive, De-

- defendants/Respondents., 1999 WL 33742647, \*33742647+ (Appellate Brief) (Cal.App. 4 Dist. Dec 09, 1999) **Respondents' Opening Brief** (NO. G025296) " \* \* \* **HN: 4 (Cal.Rptr.)**
- 131 John Roland DAVIES, Jr. And Betty L. Davies, Plaintiffs/Appellants, v. Ed Gregory HOOK-STRATTEN, an individual; Aimee Hookstratten, an individual; Ed Gregory Hookstratten, Trustee of the Hookstratten Family Trust Dated August 28, 1996; 739 Via Lido Soud, Lic, a California limited liability company; Kevin D. Weeda, an individual; and Does 1 through 25, Inclusive, Defendants/Respondents., 1999 WL 33742767, \*33742767+ (Appellate Brief) (Cal.App. 4 Dist. Dec 09, 1999) **Respondents' Opening Brief** (NO. G025296) " \* \* \* **HN: 4 (Cal.Rptr.)**
- 132 M.L. STEEL CONSTRUCTION, INC., Plaintiff and Appellant, v. WEEGER BROS., INC., et al., Defendant and Respondent., 1999 WL 33742893, \*33742893+ (Appellate Brief) (Cal.App. 4 Dist. Mar 15, 1999) **Brief of Respondent** (NO. G024149) \* \* \* **HN: 3,4 (Cal.Rptr.)**
- 133 Felix MARTIN, Petitioner and Appellant, v. Loretta MARTIN, Respondent and Respondent., 1998 WL 34345727, \*34345727 (Appellate Brief) (Cal.App. 4 Dist. Aug 24, 1998) **Appellant's Opening Brief** (NO. G023420) \* \* \*
- 134 In re Marriage of Ditty, Frances C. DITTY, Appellant/Respondent, v. John A. DITTY, Respondent/Appellant., 1998 WL 34191475, \*34191475+ (Appellate Brief) (Cal.App. 4 Dist. Jul 19, 1998) **Respondent's Brief on Cross-Appeal** (NO. G021997) \* \* \* **HN: 7 (Cal.Rptr.)**
- 135 In Re The Marriage of Charles R. BURNS, Petitioner and Respondent, v. Catherine M. CREEDEN, Respondent and Appellant., 1998 WL 34316128, \*34316128+ (Appellate Brief) (Cal.App. 4 Dist. Jul 19, 1998) **Appellant's Opening Brief** (NO. E017966) \* \* \* **HN: 2,5,7 (Cal.Rptr.)**
- 136 Jeffrey Gil CHECK, Petitioner/Appellant, v. Theresa Ann CHECK, Respondent/Respondent., 1998 WL 34191405, \*34191405+ (Appellate Brief) (Cal.App. 4 Dist. Jul 13, 1998) **Respondent's Opening Brief** (NO. G021798) \* \* \* **HN: 3 (Cal.Rptr.)**
- 137 In re the Marriage of: Frances Carol DITTY, Petitioner/Respondent and Cross-Appellant, v. John Alexander DITTY, Respondent/Appellant and Cross-Respondent., 1998 WL 34191474, \*34191474+ (Appellate Brief) (Cal.App. 4 Dist. Mar 17, 1998) **Cross-Appellant's Opening Brief** (NO. G021997) " \* \* \* **HN: 5,7 (Cal.Rptr.)**
- 138 Stephen WEISS, Appellant and Respondent, v. KAREN WEISS, Respondent and Petitioner., 1997 WL 33785915, \*33785915+ (Appellate Brief) (Cal.App. 4 Dist. Oct 07, 1997) **Appellant's Reply Brief** (NO. G020781) \* \* \* **HN: 7 (Cal.Rptr.)**
- 139 Anne Marie KUNKLE, Petitioner/Respondent, v. Lawrence F. KUNKLE, Respondent/Appellant., 1997 WL 33785241, \*33785241+ (Appellate Brief) (Cal.App. 4 Dist. Jul 1997) **Appellant's Opening Brief** (NO. E019729) \* \* \* **HN: 2 (Cal.Rptr.)**
- 140 Stephen WEISS, Appellant and Respondent, v. Karen WEISS, Respondent and Petitioner., 1997 WL 33787623, \*33787623+ (Appellate Brief) (Cal.App. 4 Dist. Jun 23, 1997) **Appellant's Opening Brief** (NO. G020781) \* \* \* **HN: 2,7 (Cal.Rptr.)**
- 141 Cathy L. (Lange) ROTHER, Petitioner/Respondent, v. Carl B.A. LANGE, III, Respondent/Appellant., 2007 WL 1278555, \*1278555+ (Appellate Brief) (Cal.App. 5 Dist. Mar 26, 2007) **Appellant's Opening Brief** (NO. F051004) \* \* \* **HN: 4 (Cal.Rptr.)**
- 142 In Re the Marriage of Sepehrdad Sima SEPEHRDAD, Respondent, v. Abbas SEPEHRDAD, Appellant., 2007 WL 2964147, \*2964147+ (Appellate Brief) (Cal.App. 6 Dist. Sep 06, 2007) **Re-**

- spondent's Brief (NO. H031094) \* \***
- 143 In re the Marriage of: Gordon Albert SONNE, Appellant, Theresa Lynne Sonne, Respondent and Cross Appellant, 2007 WL 1986146, \*1986146+ (Appellate Brief) (Cal.App. 6 Dist. Jun 04, 2007) **Respondent's Brief (NO. H030110) " \* \* \* HN: 5 (Cal.Rptr.)**
  - 144 Arista B. NELSON, Appellant, v. Charles J. NELSON, Respondent, 2006 WL 1287063, \*1287063+ (Appellate Brief) (Cal.App. 6 Dist. Feb 06, 2006) **Appellant's Reply Brief (NO. H028352) \* \* \* HN: 7 (Cal.Rptr.)**
  - 145 Dave TAUSHECK, Appellant, v. Patty TAUSHECK, Respondent, 2005 WL 1305178, \*1305178+ (Appellate Brief) (Cal.App. 6 Dist. Apr 18, 2005) **Respondent's Brief (NO. H027832) " \* \* \* HN: 7 (Cal.Rptr.)**
  - 146 In re the Marriage of: Olivia GARCIA, Petitioner and Appellant, v. Henry GARCIA, Jr., Respondent and Cross-Appellant, 2005 WL 6362603, \*6362603+ (Appellate Brief) (Cal.App. 6 Dist. Jan 05, 2005) **Respondent's Brief and Cross-Appellant's Opening Brief (NO. H027668) \* \***
  - 147 In re the Marriage of Bala M. RAJAPPAN and Sujata Gahte-Rajappan. Bala M. Rajappan, Appellant, v. Sujata Gahte-Rajappan, Respondent, 2004 WL 1513349, \*1513349+ (Appellate Brief) (Cal.App. 6 Dist. Jun 08, 2004) **Respondent's Brief (NO. H026974) " \* \* \* HN: 5 (Cal.Rptr.)**
  - 148 In re the marriage of Eulalia SILVA, Petitioner and Respondent, v. Manuel SILVA, Respondent and Appellant, 2001 WL 34129454, \*34129454+ (Appellate Brief) (Cal.App. 6 Dist. Nov 15, 2001) **Appellant's Opening Brief (NO. H023022) \* \* \* HN: 7 (Cal.Rptr.)**
  - 149 Eric HENDRICKSON, Petitioner and Respondent, v. Kimberly M. HENDRICKSON, Respondent and Appellant, 2000 WL 34224019, \*34224019+ (Appellate Brief) (Cal.App. 6 Dist. May 22, 2000) **Respondent's Reply Brief (NO. H020114) \* \* \* HN: 7 (Cal.Rptr.)**
  - 150 In Re the Marriage of Petitioner: Debbie BRANAGAN, v. Respondent: Thomas J. BRANAGAN. Debbie BRANAGAN, Appellant, v. Thomas J. BRANAGAN, Respondent, 1997 WL 33628839, \*33628839+ (Appellate Brief) (Cal.App. 6 Dist. Mar 21, 1997) **Respondent's Brief (NO. H015779) \* \* \* HN: 3 (Cal.Rptr.)**

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IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON

FAITH L. SMITH,  
  
Appellant/Cross-Respondent,,  
  
vs.  
  
FORD B. SMITH,  
  
Respondent/Cross Appellant.

No. 65739-9-1  
DECLARATION OF MAILING

I, Elaine Larsen, declare as follows:

1. I am now and at all times herein mentioned a citizen of the United States, a resident of the State of Washington and over 18 years of age.

2. I am the legal assistant to Robert T. Czeisler, attorney for Respondent/Cross-Appellant. On March 22, 2011, I deposited in the mail of the United States of America in a properly stamped and addressed envelope and via prepaid First Class Mail and sent out via Legal Messenger directed to:

David G. Porter  
Attorney at Law  
103 E. Holly Street, Ste. 409  
Bellingham, WA 98225-4728

containing a true and correct copy of:

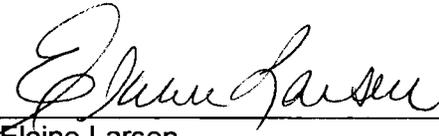
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Brief of Respondent/Cross Appellant Ford B. Smith;  
Fourth Supplemental Designation of Clerk's Papers;  
Declaration of Robert T. Czeisler re Attorney's Fees and Sanctions; and  
Declaration of Mailing.

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

DATED at Kirkland, Washington, this 22<sup>nd</sup> day of March, 2011.

  
Elaine Larsen