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No. 74726-6

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

In re the Marriage of:

EDMUND MICHAEL VONALLMEN,

Appellant,

v.

JACQUELYNE LERAY VONALLMEN,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY,

The Honorable Judith H. Ramseyer

OPENING BRIEF OF APPELLANT

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COURT OF APPEALS
STATE OF WASHINGTON

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A. SUMMARY OF ARGUMENT

The trial court's many errors render it impossible for Mr. VonAllmen to ever come close to Ms. VonAllmen's standard of living after this long term marriage. The divorce trial court's property allocation spreadsheet contains numerous significant characterization, valuation, and mathematical errors. The trial court characterized the \$198,000 second stock grant that vested post-separation as community, failed to carry the \$50,000 car loan noted in the spreadsheet down to the Liabilities section, double-counted the \$99,452.00 HELOC loan, speculated on the future value of the unvested stock grants rather than correctly listing their value as \$0, and failed to properly add up the total community and separate assets and liabilities. These errors are serious enough to cause the property distribution to significantly deviate from the court's intended 60/40 ratio and require correction on remand.

The trial court's maintenance order is both unconstitutional and contrary to the maintenance statute. The maintenance order results in an approximately \$2,693 per month expense shortfall for Mr. VonAllmen which he is unable to pay from his income. The order is unconstitutional because while Mr. VonAllmen's monthly income may eventually be supplemented by an end-of-year bonus, the maintenance modification statute, RCW 26.09.170(1)(a), expressly prohibits retroactive

modification. Therefore, the trial court's maintenance order violates Mr. VonAllmen's right to due process because it deprives him of access to the court for modification should his bonus fail.

Finally, the court's order failed to provide for the parties to have roughly equal financial means for the rest of their lives in this long term marriage. Instead, the trial court ordered Mr. VonAllmen, 54 years old, to pay a total of \$762,000 in maintenance over nine years while allocating more than 60% of the community property to Ms. VonAllmen and allocating approximately \$200,000 of Mr. VonAllmen's separate property to her in the form of future stock grants. Ms. VonAllmen received approximately \$1.3 million more in community property than did Mr. VonAllmen. Together with the onerous maintenance, the court's order creates disproportionate financial lives going into the future, in which Ms. VonAllmen has more assets, has a monthly income several thousand dollars higher than Mr. VonAllmen's yet Mr. VonAllmen receives less than 40% of the assets and a sliver of his salary upon which he cannot live without going into savings. He can never catch up to an equal financial position with Ms. VonAllmen. Consequently, the trial court's overall financial settlement is an abuse of discretion.

For these reasons, remand for correction of the property disposition and entry of an amended maintenance order is necessary.

B. ASSIGNMENTS OF ERROR

1. The trial court committed legal error on Exhibit A to the Findings and Conclusions, line 12 when it mischaracterized \$198,051 of proceeds from stock grants that were the second and third vestings after separation as community and allocated half of them to the wife.

2. The trial court abused its discretion when it entered figures for Total Liabilities and Net Value on Exhibit A that failed to account for the \$52,333 vehicle loan on the wife's Lexus that the court acknowledged on line 37A of Exhibit A.

3. The trial court abused its discretion when it double counted the \$99,452 HELOC encumbrance on the residence, by subtracting that amount from the residence's value on line 1A of Exhibit A, and also providing in the Findings and Conclusions Paragraph 2.21.7 that this amount should be paid 50/50 by the parties. The court abused its discretion in denying Mr. VonAllmen's Motion To Reconsider on this point at CP 113, paragraph 1.

4. The trial court abused its discretion when it entered a projected value of \$407,539 for unvested future stock grants rather than a value of \$0.

5. The trial court committed legal error when it characterized the Fidelity 401K on line 29 of Exhibit A as 100% community property,

because \$17,114 was contributed post-separation and is therefore Mr. VonAllmen's separate property.

6. The court erred when it entered \$5,736,487 as the value of TOTAL COMMUNITY ASSETS on Exhibit A because this amount is not the sum of the values listed in the Husband Community Assets and the Wife Community Assets on Exhibit A.

7. The court erred as a matter of law when it entered Exhibit A because Exhibit A contains so many characterization and mathematical errors that, taken as a whole, it fails to accurately identify and divide the parties' property according to the court's desired 60/40 split.

8. The court abused its discretion by entering the maintenance order on CP 68 and denying Mr. VonAllmen's request to reconsider the maintenance on CP 113 because it fails to take into account RCW 26.09.090(1)(f), the husband's ability to pay the ordered maintenance, and leaves the husband with a monthly living expense shortfall of approximately \$2,693. The court abused its discretion by stating on CP 68 paragraph 3.8.1 that it had taken into account Mr. VonAllmen's ability to meet his financial obligations after dissolution.

9. The court abused its discretion by ordering maintenance that requires Mr. VonAllmen to deplete his savings to pay it, amounting to an award of additional property to Ms. VonAllmen .

10. The court committed legal error when it entered a maintenance order on CP 68 that deprives Mr. vonAllmen of due process; he must advance Ms. VonAllmen a portion of his expected bonus each month, and should his end of year bonus fall short of what he advanced her, he cannot seek maintenance modification for what he advanced her in court as the maintenance modification statute prohibits retroactive modification.

11. The trial court abused its discretion when it awarded maintenance on CP 68 and when it states that spousal maintenance is warranted (CP 63) because the properties accumulated are substantial enough, and the award is lopsided enough, to permit a balancing of the parties' positions with little or no maintenance.

12. The trial court abused its discretion when it entered a maintenance order on CP 68 that prevents him from taking advantage of the financial benefits of voluntarily retiring from Microsoft.

13. The trial court's overall financial orders are an abuse of discretion because they do not provide for the parties to have roughly equal financial positions for the rest of their lives. It was an abuse of discretion for the trial court to enter paragraph 3.8.2, CP 68 "The division of assets and liabilities reflected on Exhibit A is fair and equitable under the totality of the circumstances."

14. The trial court's maintenance order on CP 68 creates a long

term gross financial disparity in the parties' positions going forward.

15. The trial court's award to the wife of half of Mr. VonAllmen's separate property future stock vesting proceeds on line 27 of Exhibit A is an abuse of discretion because, given the lopsided award in the wife's favor and the substantial maintenance awarded to her, it exacerbates the unequal position in which the court has placed the parties.

16. The trial court committed legal error by failing to make clear whether the unvested stock grants awarded to Ms. VonAllmen are to be considered future property distribution or future maintenance.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. According to In re the Marriage of Short, 125 Wn.2d 865, 890 P.2d 12 (1995), the second, and subsequent vestings of stock grants after the date of separation are the separate property of the employee. Did the trial court commit legal error by characterizing the \$198,051 proceeds of the second and third post-separation vesting as community property and splitting it between the parties as part of the overall 60/40 community asset split? (Assignments of Error 1, 7, 13.)

2. It is the trial court's responsibility to accurately identify and account for the parties' assets and liabilities. Here, the trial court failed to account for a \$52,333 car loan debt when it calculated Total Liabilities,

Total Assets, and Total Community Assets. Was the trial court's failure to account for this debt an abuse of discretion? (Assignment of Error 2.)

3. It is the trial court's responsibility to accurately value the parties assets and liabilities. Here, in its written Findings and Conclusions, the trial court ordered the parties to immediately pay a \$99,452 HELOC encumbering the residence, while at the same time lowering the value of the residence by the HELOC amount. Did the trial court abuse its discretion by double-counting the HELOC liability and undervaluing the residence awarded to the wife? (Assignment of Error 3.)

4. The current value of any unvested stock grants can only be \$0 because the employee does not own anything until vesting and vesting is contingent on satisfaction of several requirements. Did the trial court abuse its discretion by finding the unvested stock grants had a value of \$407,539 when they can only be valued as \$0? (Assignment of Error 4.)

5. Griswold holds that accumulation of separate property begins at separation. 112 Wn.App. at 339. Here, it was undisputed that \$17,114 of Mr. VonAllmen's Fidelity 401K was contributed post-separation. Did the trial court commit legal error when it characterized the entire Fidelity amount as community, without carving out \$17,114 as Mr. VonAllmen's separate property? (Assignment of Error 5.)

6. It is the court's responsibility to correctly identify the parties' property. Here, the court did not correctly sum the value of the parties' TOTAL COMMUNITY ASSETS and the figure assigned to this category by the court cannot be arrived at using the spreadsheet figures. Did the trial court abuse its discretion by assigning an incorrect value to TOTAL COMMUNITY ASSETS? (Assignments of Error 6, 7.)

7. RCW 26.09.090(1)(f) requires the court to consider Mr. VonAllmen's ability to meet his financial obligations while paying maintenance. Here, the trial court ordered maintenance that leaves Mr. VonAllmen with a monthly living expense shortfall of \$2,693. Did the trial court abuse its discretion by failing to properly consider RCW 26.09.090(1)(f)? (Assignment of Error 8.)

8. Barnett holds that it is impermissible double dipping to award maintenance that must be paid out of assets awarded to the maintenance payor. Here, Mr. VonAllmen must use \$2,693 of his assets every month to pay the ordered maintenance. Did the trial court abuse its discretion by impermissibly distributing the same property twice? (Assignment of Error 9.)

9. RCW 26.09.170(1)(a) expressly prohibits retroactive modification of maintenance. Here, the trial court ordered maintenance that requires Mr. VonAllmen to advance 1/12 of his later-received bonus

to the wife every month. Should the bonus Mr. VonAllmen eventually receives fall short of the amount he was required to advance as maintenance, he thus has no recourse to court for modification of the maintenance. Does the trial court's maintenance order deprive Mr. VonAllmen of due process? (Assignment of Error 11.)

10. Wright holds that when there has been a lopsided award of a substantial estate in the maintenance recipient's favor, substantial long term maintenance is only appropriate when it is necessary to avoid leaving the maintenance recipient in an inferior financial position for the rest of her life. 179 Wn.App. 257. Here, the trial court awarded the wife 60% of the community assets totaling over \$3 million, several hundred thousand dollars of the husband's separate property, and 9 years of maintenance; the first four years at \$8,500/month, the following three years at \$6,500/month, and the final two years at \$5,000/month. The husband received 40% of the assets and is left with a living expense shortfall every month. Did the trial court abuse its discretion by entering a maintenance order that fails to adequately balance the parties' financial positions? (Assignment of Error 11.)

11. A voluntary reduction in income will not constitute a change of circumstances warranting maintenance modification. Lambert v. Lambert, 66 Wn.2d 503, 510, 403 P.2d 664(1965). Here, the trial court

ordered substantial maintenance payments that in practice prevent Mr. VonAllmen from voluntarily initiating a departure from Microsoft to a lower-paying job. Yet voluntarily departing from Microsoft is the only way to ensure vesting of stock grants for 5 years into the future. Did the trial court abuse its discretion by ordering maintenance that effectively prevents Mr. VonAllmen from ensuring that his unvested stock grants will vest, and managing the risk of layoff to the best of his ability?

(Assignment of Error 12.)

12. In a long-term marriage, the court's objective must be to place the parties in roughly equal financial positions for the rest of their lives. In re Marriage of Wright, 179 Wn. App. 257, 262, 319 P.3d 45 (2013). Here, the trial court's 60/40 asset split, combined with 9 years of onerous maintenance and the award of substantial separate property from Mr. VonAllmen to the wife places Mr. VonAllmen at a financial disadvantage from which he can never recover. Did the trial court abuse its discretion by entering maintenance and property orders that fail to place the parties in roughly equal financial positions for the rest of their lives? (Assignments of Error 13-15.)

13. It is the trial court's responsibility to characterize an amount awarded as either property or income. Here, the trial court characterized the unvested stock grants as property, then said that the unvested grant

award to the wife was intended to supplement the wife's income going over time. CP 66. Did the trial court abuse its discretion by failing to clearly characterize the unvested stock grants either property or income? (Assignment of Error 16.)

D. STATEMENT OF THE CASE

1. Procedural History. The parties married in 1992 and separated on August 25, 2014. CP 62. Trial took place in December, 2015 with the Findings and Conclusions and Decree entered on December 28, 2015. CP 68. Mr. VonAllmen unsuccessfully moved for reconsideration and the order denying reconsideration was entered on January 14, 2016. CP 113-14. This appeal timely followed on February 11, 2016. CP 160.

2. Relevant Facts.

a. Background. Mr. VonAllmen, age 53 at trial, had worked at Microsoft for twenty-four years. 1 RP 140. Microsoft has engaged in massive layoffs from 2011-present in Mr. VonAllmen's specialty area and the pressure to leave the company once that tenure is reached is immense. 1 RP 140; CP 64, 138-39.¹ His now ex-wife Jacki, age 52 was primarily a homemaker. Id. They have two children, one of whom is now entering college; the other was 15 at trial. CP 63. Mr.

¹ The Verbatim Report of Proceedings contains 3 volumes. References to pages shall state the volume number, then RP, then the page number.

VonAllmen's job is highly stressful and since 2011 he had planned to leave Microsoft so as to transition to a less stressful job in which to work out his remaining years. CP 64. The couple owned a lovely home on NE Champagne Point Road outright, worth slightly over \$1 million. CP 69. In addition, they had substantial additional community assets worth approximately \$4.5 million and no significant liabilities. Appendix A. The parties' investment portfolio with Freestone Capital generates about \$80,000 a year in interest and dividends, with an average long term annual rate of return of 6%. 1 RP 53.

Mr. VonAllmen and his wife did not see eye to eye regarding money; he wanted her to create and follow a budget which would allow the family to spend intentionally and adjust to living on an income lower than Microsoft pays when Mr. VonAllmen eventually left. 1 RP 129, 143, 153-55. Ms. VonAllmen had control of the day to day financials and payment of expenses, yet did not have any interest in reducing expenses. Id., 1 RP 157. Eventually this irreconcilable difference lead to the breakdown of their marriage. Id. Shortly before separation, Ms. VonAllmen secretly encumbered the community home with a \$100,000 HELOC, retaining the proceeds for her own use in a separate account. CP 65. She used this money for attorney fees and supplemental living

expenses and childrens' items. CP 65. At trial, \$99,452 was owed on the HELOC. CP 69.

As of trial, Mr. VonAllmen grossed \$17,886/month, with a net of \$12,400/month. 1 RP 44, 45. This figure does not include his bonus. Id., Exhibit 33. His base salary has increased an average of 3% per year long term. 1 RP 44. In September of each year he receives any bonus that Microsoft chooses to award him. 1 RP 46. Unless and until he receives any further bonus, he must live on \$12,400 per month. As part of Mr. VonAllmen's employment at Microsoft, he generally receives bonuses; in the most recent year his gross bonus was \$50,700/ 1 RP 46. His 2015 bonus was 14 percent less than his 2014 bonus. 1 RP 46. He also generally receives awards of unvested stock. 1 RP 48-9. The grants vest on a 5 year schedule, with 20% of the older grants vesting once each year for 5 years (known as a "tranche"); the newer grants vest at 10% twice each year for 5 years (thus two "tranches" vesting per year). 1 RP 48.

Both of Mr. VonAllmen's financial experts explained that until a stock grant vests, it has no value because the employee owns nothing - the employee does not receive ownership of the stock until they have met vesting requirements, including continued employment with Microsoft. 1 RP 48-49, 80; 2 RP 248. Microsoft describes the value of the unvested

stock it awards employees as \$0 until vesting. Exhibit 17, p. 2. The price at which the grants eventually vest is highly unpredictable. 1 RP 49.

Once an employee reaches age 55, they have the opportunity to voluntarily retire from Microsoft with a package that includes automatic, immediate vesting of all outstanding stock grants at whatever value they carry on that day. 1 RP 49; 2 RP 248. If an employee separates from Microsoft under conditions other than voluntary retirement, they immediately lose all unvested stock options. 1 RP 49; 2 RP 248.

After the parties separated on August 24, 2014, Mr. VonAllmen opened a separate checking account. CP 62; 2 RP 330. On September 2, 2014, a stock vesting occurred; the first vesting after separation. Exhibit 33, p. 2 and Schedule 1 (yellow highlight) attached as Exhibit C. The next vesting, the second after separation, occurred on February 28, 2015; the third vesting after separation occurred on August 31, 2015, 2015. 2 RP 237; CP 37 line 12A. The proceeds of the second and third vestings after separation, totaling \$198,051, were placed in Mr. VonAllmen's new separate checking account. CP 37 line 12A; 2 RP 330-1.

Mr. VonAllmen continued to contribute to his Fidelity 401K post-separation, acquiring \$17,114 after the date of separation. 2 RP 341; Exhibits 7, 31.

Post-separation, Ms. VonAllman bought herself a new Lexus car. She financed it and at trial \$52,333 was owed on the car. The trial court placed this liability on its spreadsheet at line 37A of the court's Exhibit A but not in the Net Value column (attached as Appendix B.)

The wife's financial expert, Kevin Grambush, provided a report written in July, 2015 (before the November, 2015 stock vesting) valuing the unvested stock grants at \$407,539. 2 RP 211, 213. Supp'l CP ____.² All three financial experts, Ellen Webber and Neil Beaton for Mr. VonAllmen and Kevin Grambush for Ms. VonAllmen, agreed that while the stock is unvested, the employee does not own any stock or indeed anything at all. 2 RP 212.

Mr. VonAllmen presented a financial declaration at trial which showed his monthly living expenses at \$7,182. Exhibit 1. This figure was not disputed at trial.

At trial, Ellen Webber presented her evaluation of the parties' competing property and maintenance proposals, evaluating them in light of both income going forward and long term financial projections regarding their relative overall positions. 1 RP 42. Ms. Webber assumed that Mr. VonAllmen's bonus and salary would continue at the current level

² Exhibit 137, Kevin Grambush's report, was supplementally designated on August 1, 2016.

and that all unvested stock grants would vest equal to the current Microsoft price. 1 RP 51. In Exhibit 44, she modeled the parties' respective future incomes not counting investment income, with \$10,000 maintenance, and income imputed to the wife at \$2,714 per month, 50/50 sharing of bonuses if the bonuses continue at the 2014 level. Under these circumstances, the wife's annual after-tax income would be \$140,347 and Mr. Von Allmen's would be \$91,377. Id. Ms. Webber explained to the court that when investment income is included in the projection, under the wife's trial proposal, Ms. VonAllmen would have twice Mr. VonAllmen's net worth at age 62. 1 RP 57-8.

b. The trial court's rulings. The trial court decided on a 60/40 overall split of community property. CP 68. In its property spreadsheet, Exhibit A (Appendix B) on line 1A, the trial court deducted \$99,452 from the value of the residence for the HELOC. In its written Findings and Conclusion, the court provided for the HELOC to be paid equally by the parties. CP 65.

On line 12 of its spreadsheet, the trial court characterized the \$198,051 from Mr. VonAllmen's second and third stock vestings as community and split it 50/50 between the parties. CP 69. On line 27, the trial court adopted a \$407,539 present value for Mr. VonAllmen's unvested stock grants and awarded them 50/50. CP 69. On Line 29, the

trial court characterized all of Mr. VonAllmen's retirement as community, without reference to the \$17,114 he accumulated post-separation. CP 70.

On line 37A of the spreadsheet, the trial court noted the Lexus loan of \$52,333. CP 70. It then entered this amount in the "Debt, Loan" column at a value of \$50,000. Id. The trial court did not carry this amount down to the Liabilities section, lines 49-53, or include it in Total Liabilities. CP 70. The trial court did not include this debt in the Net Value column. Id.

At the end of the spreadsheet, the trial court entered figures for Husband Community award and Wife Community award; when added up, these figures differ from the court's figure for TOTAL COMMUNITY ASSETS by \$50,001. CP 70. The court expressed the husband's percentage of TOTAL COMMUNITY ASSETS as 39.% and the wife's percentage of TOTAL COMMUNITY ASSETS as 59.86%. Together these two percentages add up to 99.12%, not 100%.

The trial court awarded Ms. VonAllmen 9 years of maintenance:

48 months	\$8,500 per month, followed by
36 months	\$6,500 per month, followed by
24 months	\$5,000 per month

CP 68. The court stated it had taken into account all the statutory factors and had averaged Mr. VonAllmen's salary and bonuses over the last two years to determine a baseline of income from which to assess his ability to

pay. The above maintenance is in addition to the 18 months of maintenance Mr. VonAllmen paid pretrial. CP 82.

In paragraph 2.21.10, the court characterized the unvested stock grants as "property, not as Petitioner's annual income." CP 66. A few lines later, the court stated, "[t]o equalize income over time ... all unvested Microsoft stock awarded to Petitioner before the date of separation shall be sold ... and net proceeds shared equally." CP 66.

The trial court acknowledged in paragraph 2.21.2 that Mr. VonAllmen wished to retire from Microsoft at age 55, assuming he is not subject to a reduction in force before then, and find related work with a smaller, less demanding enterprise. CP 64. The court noted that Ms. VonAllmen has primarily been a homemaker and could earn approximately \$31,00 per year without additional training. *Id.* The court determined the parties' separation date to be August 25, 2014. CP 62.

E. ARGUMENT

1. THE TRIAL COURT'S PROPERTY AND LIABILITY ALLOCATION SPREADSHEET CONTAINS SO MANY SERIOUS ERRORS THAT IT FAILS TO ACCURATELY IDENTIFY THE PARTIES' ASSETS AND LIABILITIES AND SIGNIFICANTLY DEVIATES FROM THE COURT'S INTENDED 60/40 RATIO, REQUIRING CORRECTION ON REMAND

Mathematical errors that affect the award of property must be corrected. Marriage of Irwin, 64 Wn. App. 38, 55, 822 P.2d 797, rev.

denied, 119 Wn.2d 1009 (1992). In Irwin, the trial court intended a 50/50 split of property but it made a mathematical error that caused the split to be Wife- \$4,669,075/Husband -\$5,956,575. Irwin, 64 Wn. App. at 49. This court found that the error required correction. Id. 64 Wn. App. 50-51.

Similarly, the court's mathematical errors here require correction so as to correctly identify and value the parties' assets and liabilities, achieve the trial court's stated ratio and correctly understand the parties' relative financial positions going forward. The court mischaracterized as community property \$198,051 in separate stock grants that were the second vesting after separation and included them in TOTAL COMMUNITY ASSETS; failed to subtract a \$52,333 vehicle loan from TOTAL COMMUNITY ASSETS; double-counted the \$99,452 HELOC encumbrance on the residence, thus undervaluing the residence which was awarded to the wife; speculated that the future value of the unvested stock grants would be \$407,539 rather than correctly listing their value as \$0. These errors require remand for correction. Irwin, 64 Wn. App. at 55. To aid this Court's understanding of the impact of these issues, a corrected Exhibit A addressing these errors is attached as Appendix A.

Fortunately, the trial court provided instructions for how to proceed if something on the spreadsheet caused the overall settlement to deviate from 60/40: the court explicitly stated in its Findings of Fact and

Conclusions of Law "[i]t is the Court's intention to divide community assets 40% to Petitioner and 60% to Respondent. ... Values on Exhibit A represent ratios, and may not reflect actual values on the date assets and debts are divided. **To the extent there is a discrepancy between specific findings and allocations made in the paragraphs herein and on Exhibit A, the written allocation made herein prevails.**" CP 68 (FOF/COL attached as Appendix B). (Emphasis added.) Therefore, remanding to correct errors and bring the allocations into line with the desired 60/40 split is proper because it effectuates the trial court's intent.

a. **Standard of Review.** The court's classification of property as separate or community is a question of law, to be reviewed *de novo*. In re Marriage of Skarbek, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). "[T]he court must have in mind the correct character and status of the property ... before any theory of division is ordered." In re Marriage of Brewer, 137 Wn.2d 756, 766, 976 P.2d 102 (1999). Mathematical errors in division of marital property are reviewed as an abuse of discretion. In re Marriage of Wright, 78 Wash.App. 230, 234, 896 P.2d 735 (1995).

b. **The trial court erred as a matter of law by characterizing the \$198,051 second stock grant that vested post-separation as community property.** The seminal decision on the classification of stock options for purposes of property division in a

marriage dissolution action is In re the Marriage of Short, 125 Wn.2d 865, 890 P.2d 12 (1995). Short concerned stock options that, as in the present case, were granted to a spouse during marriage and vested over a period of time after the spouses were found to have been living separate and apart. See also, In re Shui, 132 Wn.App. 568, 125 P.3d 180 (2005).

When, as in this case, stock grants are granted to incentivize future services, Short held that such grants are acquired over time as the stock options vest. Exhibit 1 p. 1; Short, 125 Wn.2d at 874. The "time rule" is used to determine what fraction of the first vesting after separation is separate or community; and, pursuant to RCW 26.16, all following vestings are purely separate property. Short, 125 Wn.2d at 874. Second and subsequent stock grants that vest post-separation are separate property. Short at 875. "... [T]he "time rule" is applied to the first stock option to vest after the parties are found to be "living separate and apart." Short held that "all subsequent stock options vest[ing] while [husband and wife] were living separate and apart" are the separate property of the party to whom the stock grant was awarded." Id at 875. As Short noted, this rule is consistent with the rule that accumulation of separate property begins at separation. In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002), review denied, 148 Wn.2d 1023 (2003); RCW 26.16.140.

The parties separated on August 25, 2014. CP 62. The first vesting after separation occurred only a few days later, on August 31, 2014. Exhibit 31, Schedule 1 (yellow highlight) attached as Appendix C. The proceeds of this first vesting were shared equally. The second stock vesting was on February 28 2015 and the third vesting was on August 31, 2015. Exhibit 31, Schedule 1 (pink highlights).

The proceeds of the second and third stock vestings after separation are held in Wells Fargo Checking Acct. #1102, valued at \$198,051. This is an account Mr. VonAllman opened in September, 2014, the month after the parties' August 25, 2014 separation. CP 62; 2 RP 330. This amount is wholly separate property. as it is proceeds from the second and third vestings after separation. Short at 875. The trial court was informed of this analysis and the supporting facts both at trial and directly after trial, via Mr. VonAllmen's Brief Re Asset And Debt Spreadsheet, CP 36.

Given the court's statement in section 2.21.10 of the Findings and Conclusions, "[t]he Court adopts the characterization of [proceeds of stock awards] as community and separate as provided by Petitioner's financial expert," it is possible that the characterization of the \$198,051 as community was a scrivener's error. CP 66. The expert to which the court is referring, Neal Beaton, provided a report which showed the court that the

\$198,051 was entirely Mr. Von Allmen's separate property. Exhibit 31, Schedule 1.

Given the August 25, 2014 separation date adopted by the trial court, this account and all its proceeds is certainly separate property. CP 62. Characterizing almost \$200K of separate property as community property erroneously inflated the calculation of TOTAL COMMUNITY PROPERTY and thereby inflated the wife's award of CP. Reversal and remand is required to correct this error.

c. The trial court erred in including the \$99,452 HELOC loan against the house as a liability lowering its net value when it had already provided for payment of the HELOC in the written portion of its Findings of Fact and Conclusions of Law.

Including the HELOC on the spreadsheet and also separately providing for its payment in the FOF/COL double-counts the HELOC. The trial court accounted for the HELOC when it ordered each party to pay half the HELOC in the written portion of its Findings of Fact and Conclusions of Law, section 2.21.7:

... [T]he HELOC debt will be shared by the parties as a community liability. Petitioner and Respondent each shall be responsible for one-half of this debt, payments to be made directly to BECU.

CP 65. Yet the trial court also used the same HELOC encumbrance to lower the net value of the home by the HELOC amount, \$99,452.

The correct way to approach this issue is to compare it to loans that do not also function as an encumbrance on real property. In such a situation, the court orders the loan to be paid and such payment does not change the value of any other spreadsheet item. The loan is only "counted" once as a liability.

But here, the trial court ordered that the loan be paid 50/50 by the parties - counting it once - and then also lowered the value of the home awarded to the wife by \$99,452 -- counting it a second time. In this situation, the trial court failed to recognize that providing for payment of the HELOC in the written portion, paragraph 2.21.7 (CP 65) of the Findings and Conclusions automatically raised the value of the real property by \$99,452. The court's written order that the HELOC be paid by the parties served to satisfy the HELOC encumbrance on the residence. Therefore, it was an error amounting to an abuse of discretion to count the HELOC a second time by lowering the value of the home by the HELOC amount. This error must be corrected on remand by removing the HELOC encumbrance from the spreadsheet and valuing the residence at its full, unencumbered value.

d. **The trial court abused its discretion when it failed to carry the \$52,333 car loan noted in the spreadsheet down to the spreadsheet's Liabilities section or include it in Net Value, thus further erroneously inflating the value of the total CP.** Exhibit A, line 37A, acknowledges a "Loan on Lexus RX350 (\$52,333) (W)." Yet in an apparent oversight, the loan amount does not appear in the "Liabilities" section of the spreadsheet, from lines 49-53, it is not summed in the next line, "TOTAL LIABILITIES," nor is it placed in the Net Value column with the other debts. CP 70. The value of both TOTAL ASSETS and the TOTAL COMMUNITY PROPERTY is therefore inaccurately inflated by the amount of the loan, \$52,333. It is an abuse of discretion to fail to include all the parties' debts when ascertaining assets and liabilities, and such an error requires correction. Irwin, 64 Wn. App. at 55.

e. **The trial court erred in characterizing the Fidelity 401K as 100% community property when \$17,114 was contributed post-separation and is therefore separate property.** Accumulation of separate property begins at separation. Griswold, 112 Wn. App. at 339. Here, Mr. VonAllmen carefully tracked his and his employer's post-separation contributions to his 401K, as well as providing the court Fidelity records documenting his separate contributions. 2 RP 341; Exhibits 7, 31. It was undisputed at trial that \$17,114 was contributed after

separation. This characterization error must be corrected on remand to show post-separation contributions as a separate asset and recalculate TOTAL COMMUNITY ASSETS accordingly.

f. The figure representing TOTAL COMMUNITY ASSETS is inflated because it was incorrectly summed on the spreadsheet. The spreadsheet contains significant math errors in the summing of total community assets that render the court's final value of TOTAL COMMUNITY ASSETS inaccurate. Remand for entry of an accurately calculated value is required.

i. The value of TOTAL COMMUNITY ASSETS in the Net Value Column of Exhibit A is inaccurate because it is not the sum of the values in the "To Husband" Community Assets and "To Wife" Community Assets as listed in the TOTAL ASSETS row.

The value the court assigned for all the Community Assets it awarded "To Husband" is shown as \$2,252,383. The value the court assigned for all the Community Assets it awarded "To Wife" is \$3,434,103. Together, these two values, the value of the husband's community award plus the value of the wife's community award adds up to \$5,686,486. Yet the value of TOTAL COMMUNITY ASSETS listed on Exhibit A is not this value: it is \$5,736,487 -\$100,001 higher than it should be.

Representing this visually plainly demonstrates the error:

Husband's CP Award:	\$2,252,838
Wife's CP Award:	\$3,434,103

TOTAL CP Awarded:	\$5,686,486
TOTAL CP in court's	
TOTAL COMMUNITY ASSETS line: ..	\$5,736,487

The ratio of husband's and wife's awards provides further evidence of the inaccuracy of Exhibit A's spreadsheet calculations and resulting awards. On the TOTAL COMMUNITY ASSETS line, the court placed a percentage ratio of community property it awarded to each party. The court assigned the husband 39.26% and the wife 59.86%. Yet these two percentages do not add up to 100% - instead, they add up to only 99.12%.

Again, a visual representation makes the error plain:

Husband's % of TOTAL COMMUNITY ASSETS:	39.26%
Wife's % of TOTAL COMMUNITY ASSETS:	59.86%

Husband % PLUS Wife's % of TOTAL CP ASSETS...	99.12%

ii. It is impossible to use the figures on the spreadsheet to arrive at the trial court's figure for Total Community Assets (\$5,736,487), thus the trial court abused its discretion when it entered that amount as the Total Community Assets and used that amount to award the wife 60% of the community assets. There is simply no basis in fact for the trial court's valuation of Total Community

Assets. It cannot be arrived at based on the evidence and the values chosen by the trial court in Exhibit A. Accordingly, entry of the court's \$5,736,487 figure to represent TOTAL COMMUNITY ASSETS is an abuse of discretion and must be remanded for correction.

The trial court's Exhibit A property and liability award spreadsheet contains so many mathematical and characterization errors that, taken as a whole, it fails to fairly and accurately divide the parties' property and assets based on the applicable law and the evidence before the court. Fortunately, the trial court has given this court guidance in its Findings of Fact and Conclusions of Law regarding how to fix this problem:

[i]t is the Court's intention to divide community assets 40% to Petitioner and 60% to Respondent. ... Values on Exhibit A represent ratios and may not reflect actual values on the date assets and debts are divided. To the extent there is a discrepancy between specific findings and allocations made in the paragraphs herein and on Exhibit A, the written allocation made herein prevails.

CP 68. (Emphasis added.)

Taken together, these serious errors cause Exhibit A to significantly deviate from the court's intended 60/40 ratio. To effectuate the court's explicitly stated intent and to accurately identify, characterize, and allocate the parties' assets and liabilities, remand for entry of corrected values and recalculation of the parties' respective awards is required.

2. THE TRIAL COURT'S MAINTENANCE ORDER MUST BE REVERSED BECAUSE MR. VONALLMEN DOES NOT HAVE THE ABILITY TO PAY THE ORDERED MAINTENANCE, BECAUSE THE MAINTENANCE ORDER VIOLATES HIS RIGHT TO DUE PROCESS, AND BECAUSE MAINTENANCE IS UNNECESSARY DUE TO THE LOPSIDED AWARD OF PROPERTY

This court reviews a trial court's award of maintenance for abuse of discretion. A trial court's discretion to order maintenance is limited only by the requirement that the amount and duration of the award be just in light of the statutory factors. In re Marriage of Washburn, 101 Wn.2d 168, 178, 677 P.2d 152 (1984). Ultimately, the court's main concern must be the parties' economic situations post-dissolution. Id. at 268. The trial court has discretion when awarding spousal maintenance, and the party challenging a spousal maintenance award must demonstrate that the trial court manifestly abused its discretion. In re Marriage of Marzetta, 129 Wn.App. 607, 624, 120 P.3d 75 (2005), abrogated on other grounds by In re Marriage of McCausland, 159 Wn.2d 607, 152 P.3d 1013(2007). While it does have broad discretion, the trial court's award must be just in light of the statutory factors under RCW 26.09.090. In re Marriage of Luckey, 73 Wn.App. 201, 209,868 P.2d 189 (1994).

When determining maintenance, some of the non-exclusive factors the trial court must consider are (1) the financial resources of the party seeking maintenance, (2) the party's ability to independently meet his or

her needs, (3) the time necessary for the party seeking maintenance to find employment, (4) the duration of the marriage, (5) the age, physical and emotional condition, and financial obligations of the spouse seeking maintenance, and (6) the ability of the spouse from whom maintenance is sought to meet his or her needs and financial obligations. RCW 26.09.090; Marzetta, 129 Wn.App. at 624. Consideration of the first factor, the parties' financial resources, includes apportioned community property. See RCW 26.09.090(1)(f).

a. **The court's maintenance award is an abuse of discretion because it does not evince a fair consideration of RCW 26.09.090(1)(f), Mr. VonAllmen's ability to meet his financial obligations.** "An award of maintenance that is not based upon a fair consideration of the statutory factors constitutes an abuse of discretion. In re Marriage of Crosetto, 82 Wn.App. 545, 558, 918 P.2d 954 (1996). The trial court is governed strongly by the need of one spouse and the ability of the other spouse to pay. In re Marriage of Foley, 84 Wn.App. 839, 845-46, 930 P.2d 929 (1997). Here, the trial court stated that "Petitioner's salary and bonuses over the last two years have been averaged to determine a baseline of income from which to assess Petitioner's ability to pay." CP 68. Yet for reasons that will become clear, in this case, this is not

an appropriate method of calculating the income Mr. VonAllmen has available to him on a monthly basis from earnings.

i. The court's maintenance order creates a hardship for Mr. VonAllmen such that it results in an approximately \$2,693 monthly shortfall in Mr. VonAllmen's living expenses. At the time of trial, Mr. VonAllmen grossed \$17,886/month, with a net of \$12,400. 1 RP 44,45. This figure does not include his bonus. Exhibit 33; 1 RP 44, 45. In September of each year he receives any bonus that Microsoft chooses to award him. 1 RP 46. Until he receives any further bonus, he must live on \$12,400 per month. The trial court ordered Mr. VonAllmen to pay \$1,411 in child support per month and \$8,500 in maintenance for the first four years of maintenance. CP 68. The order requires Mr. VonAllmen to advance 1/12 of his expected bonus to Ms. VonAllmen each month. His uncontested monthly living expenses are \$7,182. Exhibit 1. The following illustrates Mr. VonAllmen monthly shortfall:

Predissolution Monthly net income:..... \$12,400

NOTE: On remand, an upward income adjustment will be needed based on Mr. VonAllmen paying approximately \$2,000 less in taxes post-dissolution than he was at trial, as he does not owe taxes on the \$8,500 maintenance being paid to Ms. VonAllmen. This adjustment is expressed here as:

PLUS	Tax Adjustment	+ \$2,000

	Postdissolution Monthly net income	\$14,400

MINUS	Monthly child support payment	\$1,411

	Available for maintenance and	\$12,989
	Mr. VonAllmen's Living Expenses	
MINUS	Monthly maintenance payment	\$8,500

	Available for Living Expenses	\$4,489
MINUS	Living Expenses per Fin'l Declaration	\$7,182

	SHORTFALL of Living Expenses	(\$2,693)

1 RP 44-45, Exhibit 1; CP 68.

A court abuses its discretion by ordering maintenance that a spouse is not able to pay. Bungay v. Bungay, 179 Wash. 219, 223-24, 36 P.2d 1058 (1934). In Bungay, the husband was ordered to pay \$125 per month in maintenance and child support, where he had a net income of only \$200. Id. at 223. The court described this maintenance order as "impossible of performance ..." noting that "the law can look only to appellant's earning power as the measure of his duty to provide." Id. Finding that "[a]ppellant himself must be fed, clothed, and lodged, at least sufficiently so that his efficiency will not be impaired, his necessities must be considered as well as the necessities of respondent and the children," the court reversed and remanded for imposition of lower maintenance to allow the husband to cover his own living expenses. Id. at 223-24.

This court arrived at a similar conclusion in In re Marriage of Mathews, 70 Wn. App. 116, 853 P.2d 462 (1993). After a 25 year marriage, Mr. Mathews netted \$2,800 per month while Ms. Mathews earned \$455 per month. Id. at 118. The court awarded Ms. Mathews a disproportionate amount of property, including the family home, and ordered Mr. Mathews to pay \$1,400/month maintenance plus Ms. Mathews' health insurance premiums and school tuition. Id. at 119-20, 122. This court reversed because the maintenance award left Mr. Mathews with \$1,000 per month to cover his living expenses, an amount insufficient to live on, and Ms. Mathews with \$1,855 per month. Id. at 123.

Here, the trial court abused its discretion by ordering maintenance that places Mr. VonAllmen in a \$2,693/month shortfall on his living expenses. While it is true that Mr. VonAllmen may receive a bonus to make up part or all of that amount, the bonus is uncertain and even if awarded, it will not be available to him until *after* he has advanced her share of the bonus via maintenance to Ms. VonAllmen. And as explained in Bungay, "the law can look only to appellant's earning power as the measure of his duty to provide." 179 Wash. at 223. The reality is that Mr. VonAllmen does not have the monthly income to pay the ordered maintenance. The trial court erred by ordering maintenance without properly considering Mr. VonAllmen's's ability to pay. He requests this

court reverse the maintenance award and remand to the trial court for further findings on RCW 26.09.090(1)(f) and a maintenance award that is restructured to reflect consideration of this factor.

ii. The trial court erred by placing Mr.

VonAllmen in a position where he must deplete savings to pay maintenance: this is impermissible double-dipping because it amounts to an award of additional property to the maintenance recipient. In In

re Marriage of Barnett, 63 Wn. App. 385, 818 P.2d 1382 (1991), the Bametts divorced after 44 years of marriage and their major asset was their salvage business, valued at \$200, 000. Id. The trial court awarded Mrs. Barnett a \$100, 000 lien against the business. Id. The court also awarded her \$500 per month maintenance for the rest of her life. Id. at 386. The appellate court found that the maintenance award was essentially a distribution of assets, because Mr. Barnett was selling off existing scrap and not acquiring more. Id. at 388. The proceeds of the business were not from business operation but from business liquidation. Id. at 386, 388. But the distribution had already been effected by the \$100, 000 lien to Mrs. Barnett for one half the value of the salvage business. Id. at 388.

Therefore, the trial court impermissibly distributed the same property twice through the lien and the maintenance award. Id.

Here, the trial court has created the same problem that this court remedied in Barnett. The only way Mr. VonAllmen can satisfy the monthly maintenance award is to deplete assets. This does not even take into account that Mr. VonAllmen will have to pay college expenses for two children for several years. As in Barnett, the maintenance award is essentially a distribution of assets because Mr. VonAllmen must use assets already awarded to him to satisfy his maintenance obligation. As it did in Barnett, this court should reverse and remand for a maintenance order consistent with RCW 26.09.090(1)(f), preferably no maintenance at all.

b. The maintenance order deprives Mr. VonAllmen of due process because should Mr. VonAllmen's end-of-year bonus fall short, he cannot seek maintenance modification in court, since the maintenance modification statute prohibits retroactive modification.

i. Maintenance obligors have a right to due process - to redress in court. Our state has held that procedures determining maintenance must afford due process of law. In State ex rel. Lloyd v. Superior Court, 55 Wn. 347, 104 P.771 (1909), our Supreme Court decided that if alimony were ordered when it is uncertain whether a marriage exists, such alimony would constitute the taking of property without due process of law. 55 Wn. at 351. The Court specifically noted that ordering maintenance in the face of a denial of the existence of the

marriage would "subject the [payor] to an **invasion of property rights for which he might be without redress** ..." and that this deprived the payor of due process of law. Id. (Emphasis added.) Lloyd remains good law.

ii. **The court's maintenance order deprives Mr. VonAllmen of recourse in court should his bonus fail, therefore it deprives him of due process.** The trial court was aware that if Mr. VonAllmen receives a bonus, it arrives in September. 1 RP 44-46. The trial court ordered Mr. VonAllmen to pay a monthly maintenance amount that included an estimated 1/12 of his averaged annual bonus. CP 64, 68. The court's maintenance order specifically contemplates that Mr. VonAllmen will receive the average bonus amount, and will continue to receive it for the next 9 years. CP 64. This is speculative, as the bonus awards are unpredictable. 1 RP 44-46.

The maintenance order therefore requires Mr. VonAllmen to pay Ms. VonAllmen a portion of his expected bonus long before he actually receives said bonus. In essence, Mr. VonAllmen is ordered to advance Ms. VonAllmen 1/12th of his anticipated net bonus each month. Should his bonus fail, he would have to seek retroactive relief.

The due process problem arises because under the terms of the maintenance order which require him to pay his bonus to Ms. VonAllmen in advance of receiving it, the only possible relief for any particular year in

which his bonus fails is retroactive relief. Yet pursuant to RCW 26.09.170(1), "the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment..." Because the maintenance order requires that Mr. VonAllmen pay maintenance based on bonus before receiving any bonus it would be impossible for Edmund to move to modify the maintenance based on his receiving a lower or no bonus in any particular year, because the motion could not be retroactive to the previous year. As a result, Mr. VonAllmen has no recourse should his bonus fail in any particular year. This lack of recourse deprives Mr. VonAllmen of due process.

Many states hold that a violation of due process occurs in the context of either failure to afford the maintenance payor adequate notice of a hearing at which maintenance is decided, or failure to hold an evidentiary hearing on maintenance.³ In each case, the maintenance order was reversed based on the due process violation. In Mr. VonAllmen's case, however, the violation is even more serious because he must advance

³ See Eberly v. Eberly, 489 A.2d 433 (Del. 1985) Supreme Court of Delaware; Steincamp v. Steincamp, 593 P.2d 495, 1979 OK 51 (Okla. 1979) Supreme Court of Oklahoma; Queen v. Queen, 551 So.2d 197 (Miss. 1989) Supreme Court of Mississippi; Rando v. Rando, 722 So.2d 1165, 31-366 La.App. 2 Cir. 12/9/98 (La.App. 2 Cir. 1998) Court of Appeals of Louisiana, Second Circuit; Wright v. Wright, 509 S.E.2d 902, 270 Ga. 229 (Ga. 1998) Supreme Court of Georgia.

funds he has not yet been awarded to Ms. VonAllmen and, should those funds not be awarded to him, he is absolutely barred from applying to court for relief.

The due process violation should be corrected by ordering that if he must pay a percentage of his bonus, he pays it when he receives it.

c. **The substantial maintenance award is unnecessary as the properties accumulated are quite substantial and the lopsided award of property permits a balancing of the parties' positions with little or no maintenance.** Judge Winsor explained that in a long term marriage, "[l]ong term maintenance, sometimes permanent, is presumably likely to be used *unless the properties accumulated are quite substantial, so that a lopsided award of property would permit a balancing of the positions without (much) maintenance.*"⁴

Washington holds to the policy that "[t]he purpose of spousal maintenance is to support a spouse . . . until she is able to earn her own living or otherwise become self-supporting." In re Marriage of Irwin, 64 Wn.App. 38, 55, 822 P.2d 797 (1992). Even where maintenance is awarded, "one spouse should not be given a perpetual lien on the other

⁴ Winsor, Robert W., "Guidelines for the Exercise of Judicial Discretion in Marriage Dissolutions," Washington State Bar News, vol. 14, page 16 (Jan. 1982); III WASH. STATE BAR ASS'N, WASHINGTON FAMILY LAW DESKBOOK, § 32.3(3), at 32-17 (2nd ed. 2006) (Emphasis added).

spouse's future income." In re Marriage of Sheffer, 60 Wn.App. 51, 54, 802 P.2d 817 (1990). While the trial court has discretion to award both an unequal property division and maintenance in favor of the same spouse, such an award is only proper in the face of a finding that this is necessary to avoid leaving the favored spouse in an inferior position for the rest of her life. See In re Marriage of Wright, 179 Wn.App. 257, 319 P.3d 45 (2013), review denied, 180 Wn.2d 1016, 1019 (2014). This court's decisions consistently reflect this policy, especially when significant community assets have been accumulated.

In Rockwell, this court affirmed a disproportionate division of the community property to the retired wife, who was nearly 9 years older than the husband. The husband, who the trial court found would retire in seven years, was not ordered to pay maintenance to the wife, in part to give him an opportunity during those years to "earn income and save for his retirement," which was necessary due to the disproportionate award of property to the wife. Rockwell, 141 Wn. App 235, 254-55, 170 P.3d 572 (2007). This case is quite similar to Rockwell. In both cases, the husbands are nearing the end of their working lives, and in both cases the wives were given a disproportionate award of property. As in Rockwell, maintenance is not needed due to the disproportionate property award to the wife.

Similarly, in In re Marriage of Wright, 78 Wn.App. 230, 896 P.2d 735 (1995), this court found that maintenance was not necessary where the wife had received approximately 55% of the community assets. Id. at 238. Reasoning that the unequal distribution of property in the wife's favor had "obviated the need for any spousal maintenance as it substantially improved [wife's] financial position," this court affirmed the trial court's denial of maintenance. Id.

In Irwin, 64 Wn. App. at, 55, discussed supra, the trial court divided the multimillion dollar assets 50/50 and also awarded the wife \$84,000 in short-term, temporary maintenance. Id. at 44. When the wife appealed, asking for more substantial maintenance, this court held that "[g]iven the extent of the property awarded to [the wife], some of which is income producing, there was no need to award spousal maintenance while she trained for a career." Id. at 55. The only reason for the short-term maintenance was to provide cash flow for the wife until the cash flow from the property settlement began. Id.

In In re Marriage of Crosetto, 82 Wn.App. 545, 556-7, 918 P.2d 954 (1996), the trial court awarded the wife, a 47 year old with low earning capacity compared to her husband, 60% of community assets after a 21 year marriage. Because of the disproportionate property split, the wife received no maintenance. Id.

This case is analogous to the above cases. As in Irwin, the court awarded several million in community assets to each party, and the wife lived in a fully paid-for home. The wife here lives in a fully-paid for home valued at \$1,040,000. While the Irwin award was 50/50, the award in Mr. VonAllmen's case is even more favorable to the wife, as were the Crosetto and Wright awards. Under these circumstances, as in Irwin, Crosetto and Wright, the wife simply does not need long-term, substantial maintenance. Accordingly, this court should reverse the maintenance order and remand for an order that concludes that maintenance is not necessary for the parties to be in roughly equal positions going forward..

d. Ordering Mr. VonAllmen to pay substantial maintenance for 9 years prevents him from taking advantage of financial benefits that are only available when one voluntarily retires from Microsoft, thus making it more difficult for him to catch up with her position. Undisputed testimony showed that Microsoft has a policy that when an employee voluntarily retires from Microsoft at age 55 or older, their unvested stock grants all automatically instantly vest at whatever value they carry on that day. Yet if Mr. VonAllmen is laid off by Microsoft, the unvested stock is worth \$0. The only way to guarantee the unvested stock vests is for the employee to initiate retirement from Microsoft.

However, the court's maintenance order effectively prevents Mr. VonAllmen from voluntarily retiring from Microsoft (and thereby locking in the value of the unvested stock grants) because he will not be able to make as much money elsewhere and his maintenance will have to be reduced for him to have enough money to live on. However, he will not be able to petition for reduced maintenance if he voluntarily reduces his income by leaving Microsoft.⁵ The court's maintenance order thus creates a Catch-22 preventing Mr. VonAllmen from maximizing his unvested stock grants by strategically managing his departure from Microsoft. In this way, Mr. VonAllmen is unfairly prevented from catching up with Ms. VonAllmen's financial position. The order should be reversed and remanded for entry of an maintenance order that will permit Mr. VonAllmen to take advantage of the age 55 Microsoft retirement package.

3. THE TRIAL COURT'S OVERALL FINANCIAL ORDERS DO NOT PROVIDE FOR THE PARTIES TO HAVE ROUGHLY EQUAL FINANCIAL MEANS FOR THE REST OF THEIR LIVES. INSTEAD, MR. VONALLMEN CAN NEVER CATCH UP TO MS. VONALLMEN'S POSITION. ACCORDINGLY, THE FINANCIAL ORDERS ARE INEQUITABLE AND AN ABUSE OF DISCRETION.

a. **The financial orders should place the parties in roughly equal financial positions for the rest of their lives; instead,**

⁵ Voluntary reduction in income is not a basis for a reduction in maintenance. Lambert v. Lambert, 66 Wn.2d 503, 510, 403 P.2d 664(1965).

they place Mr. vonAllmen at a disadvantage from which he can never recover. When reviewing a trial court's division of marital property and maintenance, the ultimate concern is the economic condition of the parties upon the dissolution decree. Mathews, 70 Wn. App. at 121. In a long-term marriage, the court's objective must be to place the parties in roughly equal financial positions for the rest of their lives. In re Marriage of Wright, 179 Wn. App. 257, 262, 319 P.3d 45 (2013). As this court explained in Wright, "a trial court is not required to place the parties in precisely equal financial positions at the moment of dissolution." Id. Rather, to place the parties in equal financial positions for the rest of their lives, the court may account for each spouse's anticipated postdissolution earnings in its property distribution by looking forward. Id.

Correcting for the trial court's mathematical and characterization errors, the trial court ordered that the wife would receive \$3,434,103 of the community assets while Mr. VonAllmen is left with \$2,136,689. The difference between these awards as of the date of the Decree is \$1,297,434 or approximately \$1.3M. See Appendix A.

For the parties to be in equal financial positions at the end of the 9 year maintenance period, Mr. Von Allmen will need to make up not just this \$1,297,434 difference between the community property allocated to him and to Ms. VonAllmen, but what that amount will grow to at the end

of 9 years. Ellen Webber, Mr. VonAllmen's financial expert, told the court that the Freestone investments have averaged a long term gross rate of return of 6%. 1 RP 53. Given this rate of return, the \$1,297,434 extra that the trial court awarded Ms. VonAllmen will grow over the next 9 years to be \$2,191,987. This figure, therefore, is what Mr. VonAllmen will have to somehow net over the next 9 years to have a roughly equal financial position with the wife. The gross figure that he will need to bring in above and beyond what he does now over the next 9 years is \$2,849,583.68 (given an average tax rate of 30%). Looked at monthly over the 9 year period, Mr. VonAllmen would need to net - save - \$20,296.18 each month for the next 9 years in order to catch up to the wife's financial position. To net this, he would need to gross approximately **\$26,385.03 per month more than he is grossing today**. Given his earning history, this is simply not possible.

It is also not realistic to imagine that Mr. VonAllmen will make up this amount from investments: The wife and the husband were each awarded a similar amount of income-producing property. However, beyond this, the wife was awarded an unencumbered home worth over \$1 million which will appreciate substantially and approximately 60% of the retirement accounts. Taking into consideration the onerous maintenance he must pay for most of that 9 years, and his inability to time his departure

from Microsoft so as to maximize his unvested stock grants, it is clear that the court has placed Mr. VonAllmen in a position where he can never come close to even a rough financial parity with Ms. VonAllmen.

Under the terms of the maintenance order, Mr. VonAllmen will be 63 before he can begin to accrue assets without the burden of substantial maintenance payments. This is one year past the age at which he plans to retire. And for the first four years of maintenance payments, the terms of the order force Mr. VonAllmen to invade his income-producing property in order to make up the \$2,693 monthly living expense shortfall the trial court has imposed upon him. Under the totality of the circumstances, Mr. VonAllmen can never catch up to Ms. VonAllmen's financial position; their unequal positions will persist for the rest of their lives. Such an outcome is contrary to the stated policy of this court. Wright, 179 Wn. App. at 262.

b. The financial expert's undisputed testimony and models show that the maintenance ordered creates a gross financial disparity in the parties' positions going forward. While Ms. Webber did not have an opportunity to model the split and maintenance amount the court ultimately ordered, she modeled the wife's proposal, which the court's order most closely resembles. It is clear from the uncontested models in Exhibit 44 that maintenance very close to \$5,000 would bring

the parties to income parity (without considering investment income). The annual income difference would be less than \$10,000. Exhibit 44. In contrast, maintenance of \$10,000 places the parties in a grossly disparate annual income position. Exhibit 44.

The trial court's order of \$8,500 per month maintenance is much closer to the \$10,000 per month Ms. Webber modeled than to the \$5,000 per month figure. As a result, even though Exhibit 44 does not model the \$8,500 maintenance figure, it still shows that such a maintenance creates a grossly disparate annual income position in Ms. VonAllmen's favor. Such a disparity contradicts the principle that the parties to a long term dissolution should be placed in roughly equal financial positions going forward. For this reason, the maintenance order should be reversed and remanded for entry of an order that will place the parties in less unequal positions going forward.

c. The trial court's award to the wife of half of the husband's separate property future stock vestings was an abuse of discretion because it was unnecessary given the lopsided award and substantial maintenance given to the wife, and because it exacerbated the unequal position in which the court had placed the parties and made it impossible for Mr. VonAllmen to recover financial parity with the wife. In addition to awarding 60% of the community assets plus

substantial maintenance to the wife, the trial court also ordered Mr. VonAllmen to pay her 50% of his separate property stock vestings over the next several years – which the court erroneously projected at approximately \$200,000, the correct projection being approximately \$100,000. While, as discussed infra, it is impossible to assign a definite value to the unvested grants, the court's order to pay the wife half of the grants' eventual value exacerbates the imbalance of their relative financial positions because it prevents Mr. VonAllmen from being able to begin to equalize his position with hers during that time. And because the wife received a lopsided award of a sizable community estate plus substantial long-term maintenance, the award of separate property was unnecessary to create financial parity between the parties - instead it further imbalanced their positions going forward.

Ms. VonAllmen was awarded \$1.3 million more in community property than was Mr. VonAllman. It was not necessary under these circumstances to award Ms. VonAllmen a significant portion of Mr. VonAllmen's separate property. Unlike Larson, the SP award was not needed to provide the wife with liquidity. Mr. VonAllmen does not appeal the 60/40 award of correctly calculated community property, but that award amply provides for the wife without the additional speculative future separate property award.

d. It is unclear from the court's financial orders whether the unvested stock grants are to be considered property distribution or additional maintenance; remand is required to clarify the status of this award. The trial court's Findings of Fact and Conclusion of Law creates ambiguity regarding the characterization of any future proceeds of unvested stock grants. On one hand, the trial court placed the unvested grants on the property allocation spreadsheet, and stated in section 2.21.10 of the Findings and Conclusions that "[t]he Court characterizes the stock and remaining proceeds generated by sale of the stock as property, not as Petitioner's annual income." Yet, a few sentences later in the same paragraph, the court states that "*[t]o equalize income over time as well as the vagaries of the stock market, all unvested Microsoft stock awarded to Petitioner before the date of separation shall be sold ... and net proceeds shared equally by the parties.*" CP 66. (Emphasis added.) Remand is required because the status of the future proceeds of unvested grants as either property or future income (maintenance) will determine the tax status of the payment of any vesting stock to Ms. VonAllmen.

e. The trial court abused its discretion when it valued the unvested stock grants at \$407,539 rather than their correct value of \$0. The trial court abused its discretion because it assigned a fixed

dollar value to an item whose value is currently impossible to ascertain. All three financial experts and Microsoft itself agreed that the actual current value of the unvested stock grants is \$0. 1 RP 48-49; 2 RP 415; EXHIBIT 17 p. 2. The inability to assign a present value to the unvested stock grants is not a barrier to distributing them between the parties according to the trial court's chosen percentage. But the inability to assign value means it is an abuse of discretion for a court to assign a hard and fast current value other than \$0 to the unvested grants on the property allocation spreadsheet. This error must be corrected on remand.

F. CONCLUSION

Instead of allowing the parties to move forward with their lives relatively untangled, the court's maintenance and property awards enmesh them for many more years. The trial court abused its discretion by making an unfair and inequitable overall distribution of property and maintenance. Even a job at Microsoft with all its benefits cannot provide Mr. VonAllmen with the means to recover from a \$1.3 million difference in assets today or what the future value of those assets will be in 9 years. The gross earnings required to save this difference is not possible and Mr. VonAllmen will never be able to achieve a roughly equal financial position with the wife.

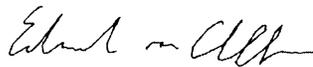
The errors in the court's spreadsheet must be corrected on remand per Exhibit A. Given the disproportionate asset split, this court should reverse the trial court's award of Mr. VonAllmen's separate property to the wife. This court should reverse the maintenance order and remand for an order that concludes that maintenance is not necessary for the parties to be in roughly equal positions going forward or in the alternative, entry of an amended maintenance order that takes into account Mr. VonAllmen's ability to pay and remedies the due process violation inherent in the maintenance order.

Exhibit A shows the \$91,640 overpayment of community property received by Ms. VonAllmen, which this court should remedy on remand.

Even if all the court's errors are corrected, the maintenance is terminated, and the order to pay separate property to the wife is reversed, Mr. VonAllmen will still never be able to come to a roughly equal financial position with the wife. These remedies, however, will bring him closer, given the court's 60/40 split.

DATED this 18th day of August, 2016.

Respectfully submitted:



Edmund VonAllmen, *pro se*

APPENDIX A

CAUSE NO. 14-3-07645-6 SEA

#	Description	Statement Date	Gross Value	Debt, LOC, Mortgage	Net Value	To Husband		To Wife	
						Community	Separate	Community	Separate
REAL PROPERTY:									
1	11144 Champagne Point Rd. NE, Kirkland, WA 98034	9/21/2015	\$1,040,000		\$1,040,000			\$1,040,000	
A	BECU HELOC #3135 (JT)	10/16/2015		\$0	\$0	\$0		\$0	
	Total Real Property:		\$1,040,000	\$0	\$1,040,000	\$0	\$0	\$1,040,000	\$0
CASH & BANK ACCOUNTS:									
2	BECU member advanced account #2377 (JT)	10/16/2015	\$675		\$675			\$675	
3	BECU money market savings #2533 (JT)	10/16/2015	\$173		\$173			\$173	
4	BECU member share savings #6118 (JT)	10/16/2015	\$398		\$398			\$398	
5	Banner bank checking #9819 (W)	10/20/2015	\$95		\$95			\$95	
6	Banner bank savings #0118 (W)	10/20/2015	\$325		\$325			\$325	
7	US Bank Checking #4638 (W)	10/22/2015	\$379		\$379			\$379	
8	US Bank savings #1339 (W)	10/22/2015	\$6,618		\$6,618			\$6,618	
9	UMB Bank HSA Account #XXXX (H)	10/1/2015	\$0		\$0	\$0		\$0	
10	Wells Fargo Checking #4885 (W)	10/19/2015	\$2,874		\$2,874				\$2,874
11	Wells Fargo Checking #1982 (JT)	10/31/2015	\$10		\$10			\$10	
12	Wells Fargo Checking #1102 (H)	9/30/2015	\$198,051		\$198,051		\$99,026		\$99,026
13	Wells Fargo Savings #0722 (H)	9/30/2015	\$40,108		\$40,108	\$20,054		\$20,054	
14	Wells Fargo Checking #0310 (H) (Closed)	9/30/2014	\$0		\$0	\$0		\$0	
15	Wells Fargo Checking #0057 (W) (Closed)	7/31/2014	\$0		\$0	\$0		\$0	
16	Wells Fargo Savings #1610 (W) (Closed)	7/31/2015	\$0		\$0	\$0		\$0	
17	Wells Fargo Savings #0964 (Property Tax) (JT) (Closed)	12/31/2014	\$0		\$0	\$0		\$0	
18	Wells Fargo Savings #5388 (Home Improvements) (JT) (Closed)	12/31/2014	\$0		\$0	\$0		\$0	
19	Wells Fargo Savings #5902 (Tuition for Daughter) (JT) (Closed)	12/31/2014	\$0		\$0	\$0		\$0	
20	Wells Fargo Savings #8350 (Travel/CC Payments) (JT) (Closed)	12/31/2015	\$0		\$0	\$0		\$0	
	Total Cash & Bank Accounts:		\$249,706	\$0	\$249,706	\$20,054	\$99,026	\$28,727	\$101,900
SECURITIES & INVESTMENT ACCOUNTS:									
21	Merrill Lynch #13F63 (JT)				\$0.00				
22	Freestone Capital (JT)	9/28/2015	X		X				
A	Freestone Adv Ptnrs II LP #1266 (JT)	10/16/2015	\$128,043		\$128,043	\$64,021		\$64,021	
B	Freestone Capital Partners #1260 (JT)	10/16/2015	\$656,529		\$656,529	\$328,265		\$328,265	
C	Freestone Opp Ptnrs LP #2101 (JT)	10/16/2015	\$257,726		\$257,726	\$128,863		\$128,863	
D	Freestone RE Opp II LP #1214 (JT)	10/16/2015	\$281,236		\$281,236	\$140,618		\$140,618	
E	Freestone RE Income Plus LP #P131 (JT)	10/16/2015	\$161,064		\$161,064	\$80,532		\$80,532	
F	Freestone RE Opp LP #0255 (JT)	10/16/2015	\$121,646		\$121,646	\$60,823		\$60,823	
G	Freestone #3203 (Non-managed) (Charles Schwab) (JT)	10/16/2015	\$117,272		\$117,272	\$58,636		\$58,636	
H	Freestone #7182 (Global Equities) (Charles Schwab) (JT)	10/16/2015	\$1,317,200		\$1,317,200	\$658,600		\$658,600	
I	Freestone #0038 (Intermediate Core Blend) (Charles Schwab)	10/16/2015	\$212,399		\$212,399	\$106,200		\$106,200	
J	Charles Schwab #1269 (JT)				\$0				
K	Charles Schwab #1481 (JT)				\$0				
23	Charles Schwab #0769 (MSFT ESPP) (H)		\$0		\$0				
24	Fidelity #8103 (MSFT Stock/Grant ESPP) (H)	10/31/2015	\$39,838		\$39,838	\$6,320	\$27,198	\$6,320	
25	Morgan Stanley #7423 (MSFT Stock/Grant ESPP) (H)	12/8/2015	\$0		\$0				
A	Morgan Stanley #6264/#6166 (Linked to #7423) (H)	1/31/2012			\$0				
26	Smith Barney/Citigroup #0100 (MSFT Stock/Grant) (H)		\$0		\$0				
27	Unvested Microsoft Stock (H)	10/31/2015	\$0		\$0		\$0		\$0

	Total Securities & Investment Accounts:		\$3,292,953	\$0	\$3,292,953	\$1,632,877	\$27,198	\$1,632,877	\$0
RETIREMENT ACCOUNTS:									
28	American stock 401(k) #1896 (H)	11/20/2014	\$1,191		\$1,191	\$1,191			
29	Fidelity 401(K) #9766 (Microsoft) (H)	10/16/2015	\$1,177,324		\$1,177,324	\$487,288	\$17,114	\$672,922	
30	Merrill Lynch SEP IRA #1756 (W)	9/30/2015	\$44,089		\$44,089			\$44,089.00	
	Total Retirement Accounts:		\$1,222,604	\$0	\$1,222,604	\$488,479	\$17,114	\$717,011	\$0
RETIREMENT ACCOUNTS:									
31	Term through Employment (Microsoft) (H) (\$432,000)	2015	X		X				
	Total Life Insurance:		\$0	\$0	\$0	\$0	\$0	\$0	\$0
VEHICLES:									
32	Audi 2007 Avant (JT)	9/28/2015	\$4,746		\$4,746			\$4,746	
33	Ford 1996 Explorer (W) (Retain for Son to Drive)	9/29/2015	\$1,242		\$1,242			\$1,242	
34	BMW 2003 Z3 (H)	9/28/2015	\$5,248		\$5,248	\$5,248			
35	1959 Porsche - 356 Convertible D (H)	9/2/2014	\$190,000		\$190,000		\$190,000		
36	Laser (Sailboat) (JT)	Est.	\$300		\$300	\$300			
37	Lexus RX350 (KBB Value of \$42,244) (W)	9/28/2015	\$42,244		\$42,244				\$42,244
A	Loan on Lexus RX350 (\$52,333) (W)	8/26/2015		(\$50,000)	(\$50,000)				(\$50,000)
	Total Vehicles:		\$243,780	(\$50,000)	\$193,780	\$5,548	\$190,000	\$5,988	(\$7,756)
PERSONAL PROPERTY & OTHER ASSETS:									
38	Community Property in Wife's Possession								
39	Personal Property in Husband's Possession								
40	Wife's Inherited Property								
41	Five Bottles of 1993 Opus One Wine								
42	Frequent Flyer Club Southwest Air (4 Accounts Total)								
43	Frequent Flyer Club Delta Air (4 Accounts Total)								
44	Frequent Flyer Club American West (4 Accounts Total)								
45	Frequent Flyer Club Alaska Air (4 Accounts Total)								
46	Frequent Flyer Club, American Air (4 Accounts Total)								
47	Frequent Flyer Club, United Air (4 Accounts Total)								
48	Frequent Flyer Club JetBlue (4 Accounts Total)								
	Total Personal Property & Other Assets:		\$0	\$0	\$0	\$0	\$0	\$0	\$0
LIABILITIES:									
49	Wells Fargo LOC Visa #9163	9/30/2015		(\$789)	(\$789)	(\$789)			
50	Wells Fargo Balance Plus LOC #3760 (XX)				\$0				
51	Bank of America Alaska Airlines Visa #5390/#8570/#2486 (JT)	11/3/2015		(\$9,258)	(\$9,258)				(\$9,258)
52	Citibank CitiCard Dividend Plus #2815/#6966 (W)	11/3/2015		(\$10,426)	(\$10,426)				(\$10,426)
53	Barclaycard #1792 (H) (SP)			(\$5,686)	(\$5,686)		(\$5,686)		
	Total Liabilities:		\$0	(\$26,159)	(\$26,159)	(\$789)	(\$5,686)	\$0	(\$19,684)
TOTAL ASSETS:			\$6,049,043	(\$76,159)	\$5,972,884	\$2,146,169	\$327,652	\$3,424,603	\$74,460
TOTAL COMMUNITY ASSETS:					\$5,570,772	\$2,146,169		\$3,424,603	

MARITAL LIEN >

Husband's percentage (entered by user) 40.0%
Wife's percentage (automatic) 60.0%

Each party's total dollars	\$2,228,309	\$3,342,463
Each party's percentage	40.00%	60.00%
Percentage without Marital Lien	38.53%	61.47%

Corrected Total Community Dollars Distribution

Total Community Dollars Paid to Wife from Exhibit A FOF/COL							\$3,434,103
Each party's total community dollars. Wife received community assets according to Trial orders					\$2,136,669		\$3,434,103
Each parties percentage of community dollars based on Wife receiving community assets according to Trial orders					38.35%		61.65%
Community Dollars over paid to Wife from Exhibit A FOF/COL					\$91,640		-\$91,640
Total Community Dollars Paid to Wife over Husband							\$1,297,434

Total Dollars Distribution - Corrected Exhibit A					To Husband	To Wife
Each parties Total Dollars Community + Separate					\$2,473,821	\$3,499,062
Each parties percentage of Total Dollars Community + Separate					41.42%	58.58%
Total Dollars to Wife over Husband based on Corrected Exhibit A						\$1,025,241

CHILDREN'S PROPERTY:				
A	American Funds 529 College Savings #2204 (FBO Son) (H)	10/16/2015	\$62,394	\$62,394
B	American Funds 529 College Savings #2222 (FBO Daughter) (H)	10/16/2015	\$74,707	\$74,707
C	Wells Fargo Checking #9391 (Son and W)	10/16/2015	\$362	\$362
D	Wells Fargo Savings #2456 (Son and W)	9/30/2015	\$300	\$300

APPENDIX B

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Superior Court of Washington
County of KING

In re the Marriage of:

EDMUND MICHAEL VONALLMEN,

Petitioner,

and

JACQUELYNE LERAY VONALLMEN,

Respondent.

No. 14-3-07645-6 SEA

Findings of Fact and
Conclusions of Law
(Marriage)
(FNFCL)

I. Basis for Findings

The Findings of Fact and Conclusions of Law are based on evidence presented at trial conducted December 7-9, 2015, before the undersigned judge. Present were Petitioner and his counsel of record, Alan Funk; Respondent and her counsel of record, Cynthia Whittaker; and witnesses called by the parties.

II. Findings of Fact

Upon the basis of the trial record, the court *finds*:

2.1 Residency of Petitioner

Petitioner is a resident of the State of Washington.

2.2 Notice to the Respondent

Respondent appeared, responded, or joined in the petition.

2.3 Basis of Personal Jurisdiction over the Respondent

The facts below establish personal jurisdiction over Respondent.

1 Respondent currently resides in Washington.

2 The parties lived in Washington during their marriage and Petitioner continues to
3 reside in this state.

4 **2.4 Date and Place of Marriage**

5 The parties were married on March 28, 1992 at Newport Beach, California.

6 **2.5 Status of the Parties**

7 Petitioner and Respondent separated on August 25, 2014. Although a petition for
8 dissolution was not filed until November 2014, the marriage was defunct as of the date
9 of separation.

9 **2.6 Status of Marriage**

10 The marriage is irretrievably broken and at least 90 days have elapsed since the date
11 the petition was filed and since the date the summons was served or Respondent joined.

12 **2.7 Separation Contract or Prenuptial Agreement**

13 There is no written separation contract or prenuptial agreement.

14 **2.8 Community Property**

15 The parties have real or personal community property as set forth in Exhibit A. This
16 exhibit is attached or filed and incorporated by reference as part of these findings.

16 **2.9 Separate Property**

17 Petitioner has real or personal separate property as set forth in Exhibit A. This exhibit is
18 attached or filed and incorporated by reference as part of these findings.

19 Respondent has real or personal separate property as set forth in Exhibit A. This
20 exhibit is attached or filed and incorporated by reference as part of these findings.

20 **2.10 Community Liabilities**

21 The parties have incurred community liabilities as set forth in Exhibit A. This exhibit is
22 attached or filed and incorporated by reference as part of these findings.

23 **2.11 Separate Liabilities**

24 Petitioner has incurred separate liabilities as set forth in Exhibit A. This exhibit is
25 attached or filed and incorporated by reference as part of these findings.

1 Respondent has incurred separate liabilities as set forth in Exhibit A. This exhibit is
2 attached or filed and incorporated by reference as part of these findings.

3 **2.12 Maintenance**

4 The parties are fortunate to have ample assets to provide well for them both and their
5 children in the future. Assets are divided disproportionately in favor of Respondent to
6 reduce the need for extensive spousal maintenance into the future. Some spousal
7 maintenance is warranted, however, to account for the length of the marriage, the
8 disparate earning ability of each party, and to help Respondent transition to maintaining
9 her own financial stability.

10 **2.13 Continuing Restraining Order**

11 Does not apply.

12 **2.14 Protection Order**

13 Does not apply.

14 **2.15 Fees and Costs**

15 Respondent has a need for attorney fees and Petitioner has the ability to pay. Attorney
16 fees and costs are addressed in the overall division of assets and liabilities shown on
17 Exhibit A, incorporated herein.

18 **2.16 Pregnancy**

19 Does not apply.

20 **2.17 Dependent Children**

21 The children listed below are dependent upon either or both spouses.

<u>Name of Child</u>	<u>Age</u>	<u>Parent's Names</u>
Matthew	18	Jacquelyne vonAllmen Edmund vonAllmen
Zoe	14	Jacquelyne vonAllmen Edmund vonAllmen

22 **2.18 Jurisdiction Over the Children**

23 This court has jurisdiction over the children for the reasons set forth below:

24 This state is the home state of the children because the children lived in
25 Washington with a parent or a person acting as a parent for at least six
consecutive months immediately preceding the commencement of this

1
2 proceeding.

3 Any absences from Washington have been only temporary.

4 The children and the parents or the children and at least one parent or person
5 acting as a parent, have significant connection with the state other than mere
6 physical presence; and substantial evidence is available in this state concerning
7 the children's care, protection, training and personal relationships; and the
8 children have no home state elsewhere.

9 No other state has jurisdiction.

10 **2.19 Parenting Plan**

11 Both parties are loving, responsible parents who are well-equipped to parent their
12 children. To their credit, they agreed to a parenting plan, which has been approved by
13 the court, signed on this date, and is incorporated as part of these findings.

14 **2.20 Child Support**

15 There are children in need of support and child support should be set pursuant to the
16 Washington State Child Support Schedule. The Order of Child Support signed by the
17 court on this date and the child support worksheet, which has been approved by the
18 court, are incorporated by reference in these findings.

19 **2.21 Other:**

20 2.21.1 The parties lived together before marriage, and argue as to whether this is a 22
21 or 26 year marriage. The Court need not make that determination as it does not affect
22 the outcome. By all accounts, the marriage was long term and, until separation,
23 virtually all of the parties' assets and debts were acquired during marriage.

24 2.21.2 Petitioner is 53 years old and has college degrees in Finance and Computer
25 Science. He has worked with Microsoft in various roles for more than 20 years.
Petitioner would like to retire from Microsoft at age 55, assuming he is not subject to a
reduction in force before then, and find related work with a smaller, less demanding
enterprise. Petitioner's average annual income, including salary and bonus, is
\$262,235. This amount is used to calculate child support and ability to pay spousal
maintenance.

2.21.3 Respondent is 52 years old. She has been primarily a homemaker and
currently spends an inordinate amount of time driving her children to their activities. In
1987, Respondent received a B.A. in Psychology with a minor in Business. After
graduation, she worked in several positions involving data entry/office assistance, but
has not worked out of the home since 2000. Experts retained by both Petitioner and
Respondent assessed Respondent for vocational aptitudes and interests. They agreed
that without additional training, Respondent is able to earn approximately \$31,000 per

1 year in general office work. With additional training to become, for example, a
2 paralegal, she has the capacity to increase her annual income to approximately \$50,000
3 - \$60,000 annually. Training could take anywhere between 9 months to 4 years, at a
4 cost of approximately \$5,500 - \$18,000, depending on the program pursued and the
5 pace at which she completes credits. While Respondent is able to earn an income,
6 which she should begin pursuing now, it is unrealistic to expect that her annual income
7 will exceed median net income for a woman her age.

8 2.21.4 Both parties have experienced stress and its related physical effects.
9 Respondent has additional medical conditions with which to contend, none degenerative
10 or life threatening, which require her to see a doctor regularly and maintain a treatment
11 regimen.

12 2.21.5 The parties have two children, Matthew, a senior in high school who will attend
13 college next year, and Zoe, who is in the 9th grade. The children are happy and
14 successful, and they have a positive and supportive relationship with both parents.

15 2.21.6 The primary issues before the Court involves the characterization of property
16 for allocation and child support purposes, the division of assets, and the amount of
17 spousal maintenance.

18 2.21.7 The family home is community property, which the parties agree has a value
19 of \$1,040,000. No debt was owed on the home until separation, when Respondent
20 withdrew \$100,000 on a HELOC without Petitioner's knowledge to protect against the
21 uncertainty of her financial status. She has used these funds primarily for attorney fees
22 and to support herself and the children during these proceedings. The parties agree
23 Respondent may retain the home, which she wants, but Petitioner asks that the
24 \$100,000 debt (currently \$99,452) be credited as a predistribution to Respondent, and
25 that she assume responsibility for it. Because Respondent had no access to separate
resources and was wholly dependent on community resources for her support and
attorney fees during separation, the HELOC debt will be shared by the parties as a
community liability. Petitioner and Respondent each shall be responsible for one-half of
this debt, payments to be made directly to BECU.

2.21.8 Petitioner has been giving Respondent approximately \$6,750 per month in
undifferentiated support, and covering the cost of large expenses such as the children's
tuition and taxes. Since separation, Respondent has incurred credit card debt of
approximately \$20,000. The couple has maintained 529 accounts for the children's
higher education, which they agree will be retained for the children's benefit. Petitioner
shall continue to manage those accounts for the children, and shall provide account
information to Respondent upon request.

2.21.9 The parties have investment accounts managed by Freestone that are
community property. They agree generally the accounts should be divided equally in-
kind, as different terms, conditions, and risks apply to different accounts. They disagree
on the allocation of Freestone account x7182, which has the largest balance.

2.21.10 Petitioner has been awarded Microsoft stock over his career. The past

1 practice has been to sell the stock shortly after it vests, and to use proceeds to support
2 the family and for investment purposes. Each party had an expert value and
3 characterize the vested and unvested stock awards under the standards set forth in *In re*
4 *Marriage of Short*, 125 Wn.2d 865, 890 P.2d 12 (1995), and *In re Marriage of Shui v.*
5 *Rose*, 132 Wn.App. 568, 125 PI3d 180 (2005). The experts used the same
6 methodology. Their different assessments stem from the date of separation each used
7 and the price of Microsoft stock as of the valuation date. Petitioner's expert used
8 August 25, 2014, and Respondent's expert used November 21, 2014, the date the
9 Petition was filed. The separation date used affects each analysis, as one tranche of
10 stock vested between those dates. Because the Court finds that August 24, 2014, is
11 the correct separation date, it also credits the characterization of stock performed by
12 Petitioner's expert. The Court characterizes the stock and remaining proceeds
13 generated by sale of the stock as property, not as Petitioner's annual income. Whether
14 outstanding shares are exercised over time depends on Petitioner's employment status
15 and the terms of the stock award plan. The Court adopts the characterization of this
16 property as community and separate as provided by Petitioner's financial expert. To
17 equalize income over time as well as the vagaries of the stock market, all unvested
18 Microsoft stock awarded to Petitioner before the date of separation shall be sold within a
19 reasonable time of vesting (*e.g.*, up to 90 days) and net proceeds shared equally by the
20 parties. Microsoft stock awarded to Petitioner after the date of separation is Petitioner's
21 separate property.

22
23 2.21.11 As a work benefit, Petitioner has a Microsoft Employee Stock Purchase Plan
24 ("ESPP") account, which allows him to purchase Microsoft stock at a discount from
25 money withheld from his paycheck. Up to the time of separation, all stock purchased
in the ESPP account is community property. Since separation, it is separate property.
Petitioner's expert concedes that Respondent's expert properly focused on
characterizing this asset at the time funds were withheld from Petitioner's pay, not on the
date the stock was purchased. The Court adopts Respondent's expert's methodology
as to the community and separate character of this asset, and allocates it accordingly.

2.21.12 The parties generally agree on the characterization of various bank accounts,
retirement accounts, and credit cards they hold. They are allocated as shown on Ex. A.

2.21.13 The parties own several automobiles, which are allocated as follows. To
Respondent: 2007 Audi Avant; 1996 Ford Explorer, to be used by the son; Lexus
RX350. To Petitioner: 2000 BMW Z3; 1959 Porsche 356, valued at \$190,000. The
Porsche is a classic car purchased by Petitioner's father, kept in the family, and is
Petitioner's separate property. The community paid to restore the vehicle, and
Respondent will receive an offset for her share of the community contribution by virtue of
the allocation of assets. All debts and liabilities associated with a vehicle are assumed
by the recipient.

2.21.14 The parties own a small Laser sailboat of nominal value. It is awarded to
Petitioner.

2.21.15 Petitioner has term life insurance through his employer. It is awarded to him,
but he shall maintain insurance for the benefit of his children and to secure his child
support obligations at least until his children reach the age of 25.

1 2.21.16 The parties agree they will be able to equitably divide personal property.
2 Petitioner is entitled to a walk-through of the family home before a division is made.
3 Respondent agrees Petitioner shall receive 5 bottles of 1993 Opus One wine. The
4 remainder of the wine collection and frequent flyer club miles shall be equitably divided.
Disputes over the division of personal property that cannot be resolved by agreement
shall be addressed through the parenting plan's dispute resolution process.

5 III. Conclusions of Law

6 The court makes the following conclusions of law from the foregoing findings of fact:

7 3.1 Jurisdiction

8 The court has jurisdiction to enter a decree in this matter.

9 3.2 Granting a Decree

10 The parties should be granted a decree, but they agree it should not be entered until
11 January 2016. Other final orders will be entered on this date.

12 3.3 Pregnancy

13 Does not apply.

14 3.4 Disposition

15 The court should determine the marital status of the parties, make provision for a
16 parenting plan for any minor children of the marriage, make provision for the support of
any minor children of the marriage entitled to support, consider or approve provision for
17 maintenance of either spouse, make provision for the disposition of property and
liabilities of the parties, make provision for the allocation of the children as federal tax
18 exemptions, make provision for any necessary continuing restraining orders, and make
provision for the change of name of any party. The distribution of property and liabilities
as set forth in the decree is fair and equitable.

19 3.5 Continuing Restraining Order

20 Does not apply.

21 3.6 Protection Order

22 Does not apply.

23 3.7 Attorney Fees and Costs

24 Respondent is awarded attorney fees and costs to the extent the \$100,000 she withdrew
25 from the HELOC is used for this purpose. There is no additional award of attorney fees
and costs beyond that amount.

1 **3.8 Other**

2
3 3.8.1 To determine spousal maintenance, the Court has taken into account the
4 financial circumstances of the parties, the ability and time needed for
5 Respondent to transition to financial stability, the standard of living during the

6 marriage, the duration of the marriage, the age and physical/mental condition of the
7 parties, and Petitioner's ability to meet his financial obligations after dissolution.
8 Petitioner's salary and bonuses over the last two years have been averaged to
9 determine a baseline of income from which to assess Petitioner's ability to pay.

10 Beginning January 1, 2016, Petitioner shall pay Respondent spousal maintenance as
11 follows:

48 months	\$8,500 per month, followed by
36 months	\$6,500 per month, followed by
24 months	\$5,000 per month

12 Payments may be divided into 2 equal monthly payments on the 1st and 15th of the
13 month, made by check or direct deposit as directed by Respondent.

14 Spousal maintenance is tax-deductible to Petitioner and taxable to Respondent. It shall
15 terminate upon Petitioner's death or Respondent's remarriage.

16 3.8.2 The division of assets and liabilities reflected on Exhibit A is fair and equitable
17 under the totality of the circumstances. It is the Court's intention to divide community
18 assets 40% to Petitioner and 60% to Respondent. The Court divided the Fidelity 401(k)
19 account x1756 account 44/58% to approximate the 40/60% division of community
20 assets. Values on Exhibit A represent ratios, and may not reflect actual values on the
21 date assets and debts are divided. To the extent there is a discrepancy between
22 specific findings and allocations made in the paragraphs herein and on Exhibit A, the
23 written allocation made herein prevails.

24 Dated: December 28, 2015 
25 Judith H. Ramseyer, Judge

26 Copy received:

27 Copy received:

28 _____
29 Alan S. Funk, WSBA No. 25702
30 Attorney for Petitioner

31 _____
32 Cynthia Whitaker, WSBA No. 7292
33 Attorney for Respondent

EXHIBIT A
EDMUND VONALLMEN V. JACQUELYNE VONALLMEN
CAUSE NO. 14-3-07645-6 SEA

#	Description	Statement Date	Gross Value	Debt, LOC Mortgage	Net Value	To Husband		To Wife	
						Community	Separate	Community	Separate
REAL PROPERTY:									
1	11144 Champagne Point Road NE, Kirkland, WA 98034	9/21/2015	\$1,040,000		\$940,548			\$940,548	
A	BECU HELOC #3135 (JT)	10/16/2015		(\$99,452)					
	Total Real Property:		\$1,040,000	(\$99,452)	\$940,548	\$0	\$0	\$940,548	\$0
CASH & BANK ACCOUNTS:									
2	BECU Member Advanced Checking #2377 (JT)	10/16/2015	\$675		\$675			\$675	
3	BECU Money Market Savings #2533 (JT)	10/16/2015	\$173		\$173			\$173	
4	BECU Member Share Savings #6118 (JT)	10/16/2015	\$398		\$398			\$398	
5	Banner Bank Checking #9819 (W)	10/20/2015	\$95		\$95			\$95	
6	Banner Bank Savings #0118 (W)	10/20/2015	\$325		\$325			\$325	
7	US Bank Checking #4638 (W)	10/22/2015	\$379		\$379			\$379	
8	US Bank Savings #1339 (W)	10/22/2015	\$6,618		\$6,618			\$6,618	
9	UMB Bank HSA Account #XXXX (H)								
10	Wells Fargo Checking #4885 (W)	10/19/2015	\$2,874		\$2,874				\$2,874
11	Wells Fargo Checking #1982 (JT)	10/31/2015	\$10		\$10			\$10	
12	Wells Fargo Checking #1102 (H)	9/30/2015	\$198,051		\$198,051	\$99,025		\$99,025	
13	Wells Fargo Savings #0722 (H)	9/30/2015	\$40,108		\$40,108	\$20,054		\$20,054	
14	Wells Fargo Checking #0310 (H) Closed	9/30/2014	\$0		\$0				
15	Wells Fargo Checking #0057 (W) Closed	7/31/2014	\$0		\$0				
16	Wells Fargo Savings #1610 (W) Closed	7/31/2015	\$0		\$0				
17	Wells Fargo Savings #0964 (Property Tax) (JT) Closed	12/31/2014	\$0		\$0				
18	Wells Fargo Savings #5388 (Home Improvements) (JT) Closed	12/31/2014	\$0		\$0				
19	Wells Fargo Savings #5902 (Tuition for Daughter) (JT) Closed	12/31/2014	\$0		\$0				
20	Wells Fargo Savings #8350 (Travel/CC Payments) (JT) Closed	12/31/2015	\$0		\$0				
	Total Cash & Bank Accounts:		\$249,706	\$0	\$249,706	\$119,079	\$0	\$127,752	\$2,874
SECURITIES & INVESTMENT ACCOUNTS:									
21	Merrill Lynch #13F63 (JT)				\$0				
22	Freestone Capital (JT)	9/28/2015		X	X				
A	Freestone Adv Ptnrs II LP #1266 (JT)	10/16/2015	\$128,043		\$128,043	\$64,021		\$64,021	
B	Freestone Capital Partners #1260 (JT)	10/16/2015	\$656,529		\$656,529	\$328,264		\$328,264	
C	Freestone Opp Ptnrs LP #2101 (JT)	10/16/2015	\$257,726		\$257,726	\$128,863		\$128,863	
D	Freestone RE Opp II LP #1214 (JT)	10/16/2015	\$281,236		\$281,236	\$140,618		\$140,618	
E	Freestone RE Income Plus LP #P131 (JT)	10/16/2015	\$161,064		\$161,064	\$80,532		\$80,532	
F	Freestone RE Opp LP #O255 (JT)	10/16/2015	\$121,646		\$121,646	\$60,823		\$60,823	
G	Freestone #3203 (Non-managed) (Charles Schwab) (JT)	10/16/2015	\$117,272		\$117,272	\$58,636		\$58,636	
H	Freestone #7182 (Global Equities) (Charles Schwab) (JT)	10/16/2015	\$1,317,200		\$1,317,200	\$658,600		\$658,600	
I	Freestone #0038 (Intermediate Core Blend) (Charles Schwab) (JT)	10/16/2015	\$212,399		\$212,399	\$106,200		\$106,200	
J	Charles Schwab #1269 (JT)				\$0				
K	Charles Schwab #1481 (JT)				\$0				
23	Charles Schwab #0769 (MSFT ESPP) (H)				\$0				
24	Fidelity #8103 (MSFT Stock/Grant ESPP) (H)	10/31/2015	\$39,838		\$39,838	\$6,320	\$27,198	\$6,320	
25	Morgan Stanley #7423 (MSFT Stock/Grant) (H)	12/8/2015	\$0		\$0				
A	Morgan Stanley #6264/#6166 (Linked to #7423) (H)	1/31/2012	\$0		\$0				
26	Smith Barney/Citigroup #0100 (MSFT Stock/Grant) (H)				\$0				
27	Unvested Microsoft Stock (H)	10/30/2015	\$407,539		\$407,539		\$203,769		\$203,769
	Total Securities & Investment Accounts:		\$3,700,493	\$0	\$3,700,493	\$1,632,878	\$230,967	\$1,632,878	\$203,769

EXHIBIT A
EDMUND VONALLMEN V. JACQUELYNE VONALLMEN
CAUSE NO. 14-3-07645-6 SEA

#	Description	Statement Date	Gross Value	Debt, LOC, Mortgage	Net Value	To Husband		To Wife	
						Community	Separate	Community	Separate
RETIREMENT ACCOUNTS:									
28	American Stock 401(k) #1896 (H)	11/20/2014	\$1,191		\$1,191	\$1,191			
29	Fidelity 401(K) #9766 (Microsoft) (H)	10/16/2015	\$1,177,324		\$1,177,324	\$494,476		\$682,848	
30	Merrill Lynch SEP IRA #1756 (W)	9/30/2015	\$44,089		\$44,089			\$44,089	
	Total Retirement Accounts:		\$1,222,604	\$0	\$1,222,604	\$495,667	\$0	\$726,937	\$0
LIFE INSURANCE:									
31	Term through Employment (Microsoft) (H) (\$432,000)	2015	X		X				
	Total Life Insurance:		\$0	\$0	\$0	\$0	\$0	\$0	\$0
VEHICLES:									
32	Audi 2007 Avant (JT)	9/28/2015	\$4,746		\$4,746			\$4,746	
33	Ford 1996 Explorer (W) (Retain for Son to Drive)	9/29/2015	\$1,242		\$1,242			\$1,242	
34	BMW 2000 Z3 (H)	9/28/2015	\$5,248		\$5,248	\$5,248			
35	Porsche 1959 - 356 Convertible D (H)	9/1/2014	\$190,000		\$190,000		\$190,000		
36	Laser (Sailboat) (JT)	Est.	\$300		\$300	\$300			
37	Lexus RX350 (KBB Value of \$42,244) (W)	9/28/2015	\$42,244		\$42,244				\$42,244
A	Loan on Lexus RX350 (\$52,333) (W)	8/26/2015		(\$50,000)					(\$50,000)
	Total Vehicles:		\$243,780	(\$50,000)	\$243,780	\$5,548	\$190,000	\$5,988	(\$7,756)
PERSONAL PROPERTY & OTHER ASSETS:									
38	Personal Property in Wife's Possession		X		X			X	
39	Personal Property in Husband's Possession		X		X	X			
40	Wife's Inherited Property								X
41	Five Bottles of 1993 Opus One Wine		X		X	X			
42	Frequent Flyer Club Southwest Air (4 Accounts Total)								
43	Frequent Flyer Club Delta Air (4 Accounts Total)								
44	Frequent Flyer Club America West (4 Accounts Total)								
45	Frequent Flyer Club Alaska Air (4 Accounts Total)								
46	Frequent Flyer Club American Air (4 Accounts Total)								
47	Frequent Flyer Club United Air (4 Accounts Total)								
48	Frequent Flyer Club Jet Blue (4 Accounts Total)								
	Total Personal Property & Other Assets:		\$0	\$0	\$0	\$0	\$0	\$0	\$0
LIABILITIES:									
49	Wells Fargo LOC Visa #9163 (H)	9/30/2015		(\$789)	(\$789)	(\$789)			
50	Wells Fargo Balance Plus LOC #3760 (XX)				\$0				
51	Bank of America Alaska Airlines Visa #5390/#8570/#2486 (JT)	11/3/2015		(\$9,258)	(\$9,258)				(\$9,258)
52	CitiBank CitiCard Dividend Plus #2815/#6966 (W)	11/3/2015		(\$10,426)	(\$10,426)				(\$10,426)
53	Barclaycard #1792 (H) (SP)			(\$5,686)	(\$5,685)		(\$5,685)		
	Total Liabilities:		\$0	(\$26,160)	(\$26,159)	(\$789)	(\$5,685)	\$0	(\$19,684)
TOTAL ASSETS:			\$6,456,582	(\$175,612)	\$6,330,972	\$2,252,383	\$415,282	\$3,434,103	\$179,203
TOTAL COMMUNITY ASSETS:					\$5,736,487	39.26%		\$959,891	59.86%

EXHIBIT A
 EDMUND VONALLMEN V. JACQUELYNE VONALLMEN
 CAUSE NO. 14-3-07645-6 SEA

Description	Statement Date	Gross Value	Date LOC Mortgage	Net Value	To Husband		To Wife	
					Community	Separate	Community	Separate
CHILDREN'S PROPERTY								
A American Funds 529 College Savings #2222 (FBO Son) (H)	10/16/2015	\$62,394		\$62,394				
B American Funds 529 College Savings #2204 (FBO Daughter) (H)	10/16/2015	\$74,707		\$74,707				
C Wells Fargo Checking #9391 (Son and W)	10/16/2015	\$362		\$362				
D Wells Fargo Savings #2456 (Son and W)	9/30/2015	\$300		\$300				
E Wells Fargo Savings #8866 (Son and W)	9/30/2015	\$300		\$300				
F Wells Fargo Savings #1961 (Daughter and W)	9/30/2015	\$125		\$125				
G Wells Fargo Savings #6749 (FBO Goddaughter(Holly) (JT)	9/30/2015	\$3,741		\$3,741				
Total Children's Property:		\$141,928	\$0	\$141,928				

APPENDIX C



November 2, 2015

Mr. Alan Funk
Wechsler Becker, LLP
701 Fifth Avenue, Suite 4550
Seattle, WA 98104

RE: vonAllmen Dissolution

Dear Mr. Funk:

At your request, I reviewed specific documents and reports relating to the pending marriage dissolution of Edmund and Jacquelyne vonAllmen. Specifically, I was asked to perform an independent stock grant and option allocation related to Mr. vonAllmen's Microsoft Corporation ("MFST") restricted stock grants; his MSFT Employee Stock Purchase Plan ("ESPP"); and his MFST 401(k) plan. I was also asked to provide additional analyses to aid in the characterization of exercised and unvested stock grants and review financial documents related to specific joint and separate accounts, including Ms. vonAllmen's retirement account, a home equity line of credit, and checking and savings accounts. In addition to my independent analysis, you also asked me to review and critique Kevin Grambush's allocation report dated September 22, 2015 ("Grambush Report"). The Grambush Report also includes an allocation of Morgan Stanley Account x7423 and Fidelity Investment Account x8103 that is responded to as well.

The terms "community" and "separate" are used herein as a convenience and are not meant to convey a legal opinion.

BRIEF BACKGROUND

Edmund vonAllmen started working for MSFT in 1991, receiving stock options and restricted stock units ("RSUs") as part of his compensation. As of the date of this report, Mr. vonAllmen is employed by Microsoft as a Data Architect. My analysis is based on a date of marriage of March 28, 1992 and an assumed date of separation of August 25, 2014, compared to the November 21, 2014 set forth in the Grambush Report.

Although Mr. vonAllmen received various types of equity compensation from MSFT, the Grambush Report (and our independent analysis) only includes RSUs awarded from 2010 to 2014, as these awards include a vesting schedule that spans dates that are pre- and post-separation. As discussed below, I have allocated both Mr. vonAllmen's stock awards in accordance with the "Short"¹ analysis.

ANALYSIS OF SPECIFIC VONALLMEN ASSETS AND LIABILITIES

Restricted Stock Grants

The first item I reviewed and analyzed were Mr. vonAllmen's MSFT restricted stock awards that were granted to Mr. vonAllmen from 2010 through 2014. Based on my analysis assuming a date

¹ *In Re Marriage of Short*, 125 Wn.2d 865 (1995); *In re Marriage of Shui*, 569 132 Wn. App. 568 (2005)

vonAllmen Dissolution

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of separation of August 25, 2014, the marital community's interest in the vested stock grants that were awarded to Mr. vonAllmen from 2010 through 2014 was \$137,386. Unvested stock grants cannot be sold until they are vested; however, I have estimated the net proceeds as if they were vested using a current MFST stock price. Detailed calculations are provided on Schedule 1 attached.

Separation Date of 8/25/14	Shares			Estimated Net Proceeds		
	Husband Separate	Community	Total	Husband Separate	Community	Total
Vested Restricted Stock Awards (1).....	5,096	11,886	16,982	\$ 148,781	\$ 137,386	\$ 286,166
Unvested Restricted Stock Awards.....	<u>8,332</u>	-	<u>8,332</u>	<u>\$ 293,860</u>	-	<u>\$ 293,860</u>
Total Restricted Stock Awards.....	<u>13,428</u>	<u>11,886</u>	<u>25,314</u>	<u>\$ 442,640</u>	<u>\$ 137,386</u>	<u>\$ 580,026</u>
Allocation.....	53.0%	47.0%	100.0%	76.3%	23.7%	100.0%

(1) on November 5, 2014, 4,194 shares of MSFT stock were sold for proceeds of \$200,468.76. From November 6, 2014 through October 30, 2015, Mr. vonAllmen expended \$170,148.90 on community expenses leaving a balance of \$30,337.86 as of October 30, 2015.

When a stock grant vests, the vested shares are deposited into the x7423 Morgan Stanley account, net of a portion of the shares withheld to cover taxes. All of the shares available in the x7423 Morgan Stanley account can then be exercised. It was Mr. vonAllmen's practice from 2010 through 2014 to exercise the shares as soon as he could during each vesting cycle. For example, on September 21, 2012, 4,762 shares were sold at \$31.50 for net cash proceeds of \$149,942.01, leaving zero (0) shares in the account. Similarly, on September 4, 2013, 4,223 shares were sold at \$31.24 for net cash proceeds of \$131,895.08, leaving zero (0) shares in the account.

Because of this practice, on August 25, 2014, the date of separation, no shares were vested or available for sale since they had all previously been sold or used to cover taxes. The first vesting following the date of separation occurred on September 2, 2014, when 4,194 shares were deposited in the x7423 Morgan Stanley account. As noted in the footnote above, Mr. vonAllmen sold 4,194 shares of MSFT stock as of November 5, 2014 for \$200,469 of gross proceeds, as was his practice when shares vested. The gross funds were transferred into Wells Fargo savings account #0722 and then used to pay for community expenses, including Zoe's education, property taxes, appraisal fees, tax preparation fee, roof repair, fence repair, and other joint bills. As of October 30, 2015, \$30,337.86 of proceeds from the exercise of the 4,194 stock grants which first vested after separation remains.

In order to place this amount in perspective, I prepared the following table to show the number of community and separate shares as of October 30, 2015. As shown, there were no community shares outstanding as of the date of separation since they had been sold prior to separation.



	Husband's		
	Total	Separate	Community
Shares Sold Prior to Separation	7,597	0	7,597
Shares Sold After Separation	4,323	19	4,304
Shares Vested but not Sold	5,156	5,156	0
Unvested Shares	8,238	8,238	0
Total Shares Adjusted for Commissions	25,314	13,413	11,901

MSFT Employee Stock Purchase Plan

The second item I reviewed and analyzed was Mr. vonAllmen's MSFT Employee Stock Purchase Plan as of September 30, 2015 (the latest available statement). Mr. vonAllmen contributes five (5) percent of his salary to acquire MSFT stock at a 10 percent discount. Per the ESPP, the accumulated contributions are then used to purchase MSFT stock that can either be held in Mr. vonAllmen's Fidelity account (x8103) or sold and distributed. The gains from the ESPP shares are generally taxed at ordinary income rates due to the short-term holding period, as set forth on Schedule D of the vonAllmen's personal tax returns. As of the date of separation, the Fidelity account had 272.844 shares of MSFT stock, \$855.98 of stock plan value, and \$118.41 of cash. A month later, there were the same number of shares, i.e., 272.844 shares, but Mr. vonAllmen made a \$5,663.78 contribution such that the plan value increased accordingly and cash increased to \$194.81. In October 2014, 135.757 shares were purchased with proceeds from the plan value account, increasing the number of shares in the plan to 408.601 while plan value decreased to \$881.82 and cash value remained the same. Based on my analysis, the marital community's interest in the net proceeds from the shares acquired by Mr. vonAllmen is \$12,640.04 and Mr. vonAllmen's "separate" portion of the net proceeds is \$15,217.27, as shown on Schedule 2 attached.

MSFT 401(k) Plan

The third item I reviewed and analyzed was Mr. vonAllmen's MSFT 401(k) Plan. Mr. vonAllmen makes direct contributions to his 401(k) plan and also receives contributions from MSFT. In addition, the securities within the plan generate dividends and increase or decrease in value as the market fluctuates. I have captured the value of the 401(k) balance as of August 25, 2014 and then separated direct contributions from Mr. vonAllmen as well as MSFT. I then allocated the amount of dividends and change in market value based on the ratio of "separate" versus "community" contributions since the date of separation. Based on my analysis, the marital community's interest in the MSFT 401(k) plan is \$1,143,519 and Mr. vonAllmen's "separate" portion of the plan is \$17,114, as shown in the following table.



vonAllmen Dissolution

November 2, 2015

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Date of Marriage:	3/28/1992		
Date of Separation:	8/25/2014		
	<u>Total</u>	<u>Separate</u>	<u>Community</u>
Beginning Balance 8/25/2014	\$ 1,117,006	\$ -	\$ 1,117,006
Your Contributions	11,319	11,319	-
Employer Contributions	5,392	5,392	-
Dividends	4,620	69	4,551
Change on Market Value	<u>22,295</u>	<u>334</u>	<u>21,961</u>
Ending Balance 09/18/2015	<u>\$ 1,160,633</u>	<u>\$ 17,114</u>	<u>\$ 1,143,519</u>
Allocation	100.0%	1.47%	98.5%

As mentioned previously, the terms “community” and “separate” are used herein as a convenience and are not meant to convey a legal opinion.

Other Analyses

In addition to the foregoing allocations, you asked me to review and comment on specific financial transactions that have occurred since the August 25, 2014 date of separation as well as comment on Mr. vonAllmen’s restricted stock grant dated September 10, 1991.

The vonAllmens maintained a line of credit account at the BECU, a member-owned financial cooperative, for a number of years. Mr. vonAllmen had paid the line off as of June 13, 2011 and assumed the line had been closed. However, on July 7, 2014, Ms. vonAllmen drew down \$100,000 from the line and since then has only been making minimal monthly payments, as shown on Schedule 3 attached. Mr. vonAllmen claims that the debt from this transaction rests with Ms. vonAllmen as a separate debt.

Ms. vonAllmen paid off a Bank of America Visa credit card (#x8570) on October 1, 2014. Since that time, Mr. vonAllmen has not used that credit card. A credit card statement listing transactions through October 5, 2015 indicate that Ms. vonAllmen had an account balance of \$9,033.08 that Mr. vonAllmen believes should rest with Ms. vonAllmen as a separate debt.

On September 10, 1991, a little over six and half months before Mr. vonAllmen was married, he received a restricted stock award for 60,000 shares of MFST stock with an exercise price of \$1.6667 per share. The first tranche of 15,040 shares vested on March 10, 1993 followed by six equal vestings of 7,494 shares every six months through March 10, 1996. All of these grants were subsequently exercised from September 14, 1998 through September 5, 2001, generating gross proceeds of \$1,675,307.55. If a time rule were to be applied, approximately 12.2 percent of the first tranche, or 1,830.8 shares could be characterized as separate.

GRAMBUSH REPORT REVIEW

As noted in the foregoing sections, Mr. vonAllmen was awarded specific Microsoft stock options on specific grant dates during his employment with MSFT. Each stock option tranche vested at a specific vesting date pursuant to the stock option agreement Mr. vonAllmen had with MSFT.



I reviewed the MSFT restricted stock awards summarized in the Grambush Report and compared the allocations therein to my allocations. Based upon my review of the Grambush Report and my independent analysis, I agree with the methodologies and a majority of the computations contained in the Grambush Report. However, the Grambush Report uses a separation date of November 21, 2014 whereas I have been instructed to use August 25, 2014 as the date of separation. Secondly, due to differences in measurement dates, the Grambush Report used the MSFT stock price at the close of July 31, 2015 whereas I use the price at the close of October 30, 2015. As such, the Grambush Report concludes a "community property" value of \$103,723 versus my \$137,386. However, the Grambush Report fails to address the fact that Mr. vonAllmen exercised various restricted stock tranches, sold the securities, and then used the funds primarily for community expenses. As such, the concluded "community property" value of \$103,723 needs to be adjusted for transactions that occurred subsequent to the date of separation.

Mr. Grambush provides two additional allocations, one of the Morgan Stanley Employee Stock Plan account x7423 and one of the Fidelity Individual Account x8103. As shown on Schedule 6 of the Grambush Report, the balance in the x7423 account as of August 25, 2014, the date of separation, was \$0. As such, all of the proceeds in that account should be considered separate as explained in more detail in a foregoing section. Similarly, I provided an analysis of the Fidelity MSFT ESPP account as noted above and concluded that the community portion of that account was \$12,640 versus the \$21,979 amount on Schedule 7 of the Grambush Report and \$15,217 of separate proceeds versus \$7,179 in the Grambush report.

LIMITING CONDITIONS AND OTHER ASSUMPTIONS

I did not perform an audit of any materials reviewed, and have relied on such materials, and the responses to my inquiries, as being substantially true and correct. I have no personal bias with respect to the parties involved. The opinion stated herein is valid only for the express purpose stated in the introductory paragraph above and is effective as of the report date. In keeping with professional standards, my fee is not contingent upon the dollar amount of my findings.

I will be pleased to discuss the contents of this letter and the results of my work with you in detail at any time.

Sincerely,



Neil J. Beaton, CPA/ABV/CFF, CFA, ASA
Managing Partner, Alvarez & Marsal Valuation Services, LLC

NJB:cac
Attachments



VonAllmen Dissolution
Allocation of Microsoft Stock Awards
Analysis of Vested and Unvested Restricted Stock Awards

Schedule 1

Separation Date: August 25, 2014

Date of Marriage: 3/28/1992 Current/Future Stock Price (1) \$ 52.64
 Date of Separation: 8/25/2014 Tax Rate: 33.0%

Award Date	Award Number	Number of Shares	Vest Date	Separate Property %	Community Property % (2)	Total Shares			Fair Market Value	Total Dollars			Income Taxes @ 33%			Proceeds Net of Tax					
						Total	Separate	Community		Gross Proceeds	Separate	Community	Income Taxes	Separate	Community	Net Proceeds	Separate	Community			
8/31/2010	1016323	7,544																			
		1,508	8/31/2011	0.0%	100.0%	1,508	-	1,508	\$ 26.60	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
		1,509	8/31/2012	0.0%	100.0%	1,509	-	1,509	\$ 30.82	-	-	-	-	-	-	-	-	-	\$ -		
		1,509	8/31/2013	0.0%	100.0%	1,509	-	1,509	\$ 31.88	-	-	-	-	-	-	-	-	-	-		
		1,509	8/31/2014	0.4%	99.6%	1,509	6	1,503	\$ 47.81	72,145	296	71,849	23,808	98	23,710	48,337	199	48,139	-		
		1,509	8/31/2015	100.0%	0.0%	1,509	1,509	-	\$ 43.52	65,672	65,672	-	21,672	21,672	-	44,000	44,000	-	-		
		7,544				7,544	1,515	6,029		\$ 137,817	\$ 65,968	\$ 71,849	\$ 45,480	\$ 21,769	\$ 23,710	\$ 92,337	\$ 44,199	\$ 48,139	-		
						100.0%	20.1%	79.9%		100.0%	47.9%	52.1%	100.0%	47.9%	52.1%	100.0%	47.9%	52.1%	-		
8/31/2011	1114577	6,316																			
		1,263	8/31/2012	0.0%	100.0%	1,263	-	1,263	\$ 30.82	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
		1,263	8/31/2013	0.0%	100.0%	1,263	-	1,263	\$ 31.88	-	-	-	-	-	-	-	-	-	-		
		1,263	8/31/2014	0.5%	99.5%	1,263	7	1,256	\$ 47.81	60,384	331	60,053	19,927	109	19,818	40,457	221	40,236	-		
		1,263	8/31/2015	100.0%	0.0%	1,263	1,263	-	\$ 43.52	54,966	54,966	-	18,139	18,139	-	36,827	36,827	-	-		
		1,264	8/31/2016	100.0%	0.0%	1,264	1,264	-	\$ 52.64	66,537	66,537	-	21,957	21,957	-	44,580	44,580	-	-		
		6,316				6,316	2,534	3,782		\$ 181,887	\$ 121,833	\$ 60,053	\$ 40,205	\$ 19,818	\$ 121,864	\$ 81,628	\$ 40,236	-	-		
						100.0%	40.1%	59.9%		132.0%	67.0%	33.0%	100.0%	67.0%	33.0%	100.0%	67.0%	33.0%	-		
8/31/2012	1276166	2,726																			
		545	8/31/2013	0.0%	100.0%	545	-	545	\$ 31.88	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
		545	8/31/2014	0.8%	99.2%	545	4	541	\$ 47.81	26,056	214	25,842	8,599	71	8,528	17,458	143	17,314	-		
		545	8/31/2015	100.0%	0.0%	545	545	-	\$ 43.52	23,718	23,718	-	7,827	7,827	-	15,891	15,891	-	-		
		545	8/31/2016	100.0%	0.0%	545	545	-	\$ 52.64	28,689	28,689	-	9,467	9,467	-	19,221	19,221	-	-		
		546	8/31/2017	100.0%	0.0%	546	546	-	\$ 52.64	28,741	28,741	-	9,485	9,485	-	19,257	19,257	-	-		
		2,726				2,726	1,640	1,086		\$ 107,205	\$ 81,363	\$ 25,842	\$ 35,378	\$ 26,850	\$ 8,528	\$ 71,827	\$ 54,513	\$ 17,314	-		
						100.0%	60.2%	39.8%		100.0%	75.9%	24.1%	100.0%	75.9%	24.1%	100.0%	75.9%	24.1%	-		
8/30/2013	1385402	5,030																			
		1,006	8/31/2014	1.6%	98.4%	1,006	16	990	\$ 47.81	\$ 48,097	\$ 788	\$ 47,308	\$ 15,872	\$ 260	\$ 15,612	\$ 32,225	\$ 528	\$ 31,697	-		
		1,006	8/31/2015	100.0%	0.0%	1,006	1,006	-	\$ 43.52	43,781	43,781	-	14,448	14,448	-	29,333	29,333	-	-		
		1,006	8/31/2016	100.0%	0.0%	1,006	1,006	-	\$ 52.64	52,956	52,956	-	17,475	17,475	-	35,480	35,480	-	-		
		1,006	8/31/2017	100.0%	0.0%	1,006	1,006	-	\$ 52.64	52,956	52,956	-	17,475	17,475	-	35,480	35,480	-	-		
		1,006	8/31/2018	100.0%	0.0%	1,006	1,006	-	\$ 52.64	52,956	52,956	-	17,475	17,475	-	35,480	35,480	-	-		
		5,030				5,030	4,040	990		\$ 250,746	\$ 203,437	\$ 47,308	\$ 82,746	\$ 67,134	\$ 15,612	\$ 167,999	\$ 136,303	\$ 31,697	-		
						100.0%	80.3%	19.7%		100.0%	81.1%	18.9%	100.0%	81.1%	18.9%	100.0%	81.1%	18.9%	-		
8/29/2014	1439556	3,698																			
		369	2/28/2015	100.0%	0.0%	369	369	-	\$ 43.88	16,192	16,192	-	5,343	5,343	-	10,848	10,848	-	-		
		370	8/29/2015	100.0%	0.0%	370	370	-	\$ 43.52	16,102	16,102	-	5,314	5,314	-	10,789	10,789	-	-		
		370	2/29/2016	100.0%	0.0%	370	370	-	\$ 52.64	19,477	19,477	-	6,427	6,427	-	13,049	13,049	-	-		
		370	8/29/2016	100.0%	0.0%	370	370	-	\$ 52.64	19,477	19,477	-	6,427	6,427	-	13,049	13,049	-	-		
		370	2/28/2017	100.0%	0.0%	370	370	-	\$ 52.64	19,477	19,477	-	6,427	6,427	-	13,049	13,049	-	-		
		369	8/29/2017	100.0%	0.0%	369	369	-	\$ 52.64	19,424	19,424	-	6,410	6,410	-	13,014	13,014	-	-		
		370	2/28/2018	100.0%	0.0%	370	370	-	\$ 52.64	19,477	19,477	-	6,427	6,427	-	13,049	13,049	-	-		
		370	8/29/2018	100.0%	0.0%	370	370	-	\$ 52.64	19,477	19,477	-	6,427	6,427	-	13,049	13,049	-	-		
		370	2/28/2019	100.0%	0.0%	370	370	-	\$ 52.64	19,477	19,477	-	6,427	6,427	-	13,049	13,049	-	-		
		370	8/29/2019	100.0%	0.0%	370	370	-	\$ 52.64	19,477	19,477	-	6,427	6,427	-	13,049	13,049	-	-		
		3,698				3,698	3,698	-		\$ 188,056	\$ 188,056	\$ -	\$ 62,058	\$ 62,058	\$ -	\$ 125,997	\$ 125,997	\$ -	-		
						100.0%	100.0%	0.0%		100.0%	100.0%	0.0%	100.0%	100.0%	0.0%	100.0%	100.0%	0.0%	-		
						Total Shares Awarded Through 8/29/14				25,314	13,428	11,886	\$ 865,710	\$ 660,657	\$ 205,053	\$ 285,684	\$ 218,017	\$ 67,668	\$ 580,026	\$ 442,640	\$ 137,386
						100.0%	53.0%	47.0%		100.0%	76.3%	23.7%	100.0%	76.3%	23.7%	100.0%	76.3%	23.7%	-		

Notes:

- (1) Shares that have vested and been sold are priced at date of sale; all unvested shares based on Microsoft close price on 10/30/2015.
- (2) The timing calculation for stock awards granted after marriage vesting after separation for the allocation of community shares is equal to: (Separation date - Grant date) / (Vest date - Grant date).
 Indicates shares that have vested and been sold prior to the date of separation.
 Indicates shares that have vested and been sold and proceeds disbursed as of November 10, 2014.
 Indicates shares that have vested, of which 3,417.79 shares had been exercised as of September 30, 2015.
 Indicates unvested shares.

vonAllmen Dissolution
Allocation of Microsoft Stock Awards
Microsoft Employee Stock Purchase Plan (ESPP)
US\$

Schedule 2

Separation Date: August 25, 2014

Date of Marriage: 3/28/1992
 Date of Separation: 8/25/2014
 Current Stock Price (1): \$ 52.64

	<u>Purchase Price</u>	<u>Quantity Purchased</u>	<u>Total Shares</u>	<u>Purchase Value</u>	<u>Total</u>	<u>Separate</u>	<u>Community</u>
Account Balance 8/1/2014			272.844	\$ 11,894.33	\$ 11,894.33		\$ 11,894.33
Change in Investment Value				949.50	12,843.83	316.50	633.00
3rd Quarter 2014	\$ 41.72	135.757	408.601	5,663.78	18,507.61	5,663.78	-
Change in Investment Value				870.99	19,378.60	707.68	163.31
Change in Investment Value				(77.63)	19,300.97	(63.07)	(14.56)
4th Quarter 2014	\$ -	-		-	19,300.97	-	-
Change in Investment Value				(2,561.25)	16,739.72	(2,279.28)	(281.97)
Change in Investment Value				266.61	17,006.33	237.26	29.35
1st Quarter 2015	\$ 41.81	63.273	471.874	2,645.46	19,651.79	2,645.46	-
Change in Investment Value				4,639.13	24,290.92	4,278.81	360.32
Change in Investment Value				(2,274.65)	22,016.27	(2,097.98)	(176.67)
2nd Quarter 2015	\$ 36.59	72.300	544.174	2,645.46	24,661.73	2,645.46	-
Change in Investment Value				1,850.97	26,512.70	1,740.19	110.78
Change in Investment Value				(1,300.86)	25,211.84	(1,223.00)	(77.86)
3rd Quarter 2015	\$ 39.74	66.569	610.743	2,645.46	27,857.30	2,645.46	-
Totals				\$ 27,857.30	\$ 27,857.30	\$ 15,217.27	\$ 12,640.04
Allocation					100.0%	54.6%	45.4%

Footnotes:

(1) Based on Microsoft close price on 10/30/2015.



vonAllmen Dissolution

Schedule 3

BECU Account Summary

Separation Date: August 25, 2014

US\$

Date	Description	Debit	Credit
10/15/2015	Regular Payment		254.05
10/15/2015	Master Line Scheduled Payment - Transfer from 3574906118		254.05
9/10/2015	Regular Payment		254.05
8/6/2015	Regular Payment		245.85
7/13/2015	Regular Payment		254.05
6/10/2015	Regular Payment		245.85
5/11/2015	Regular Payment		254.05
4/9/2015	Regular Payment		229.47
3/12/2015	Master Line Scheduled Payment		254.05
2/6/2015	Regular Payment		255.00
1/12/2015	Regular Payment		260.00
12/9/2014	Regular Payment		260.00
11/10/2014	Regular Payment		245.90
10/9/2014	Regular Payment		254.70
9/15/2014	Regular Payment		254.76
9/15/2014	Master Line Scheduled Payment - Transfer from 3574906118		254.76
7/29/2014	Master Line Scheduled Payment		100.00
7/7/2014	Principal Disbursement - Official Check	(100,000.00)	
6/13/2011	Pay Down Payment		57,476.24
6/13/2011	Payment Reversal	(57,499.79)	
6/10/2011	Unapplied Receipt		57,499.79
5/23/2011	Master Line Scheduled Payment		74,282.00
5/20/2011	Account Payoff - Pay off		0.35
5/15/2011	Master Line Scheduled Payment - Transfer from 3574906118		309.36
4/15/2011	Master Line Scheduled Payment - Transfer from 3574906118		263.02
4/4/2011	Principal Disbursement - Online Banking Transfer To 3574906118	(17,000.00)	
3/15/2011	Master Line Scheduled Payment - Transfer from 3574906118		375.79
2/15/2011	Master Line Scheduled Payment - Transfer from 3574906118		707.55
1/15/2011	Master Line Scheduled Payment - Transfer from 3574906118		679.41

