

20-7170

No: 044081

In The  
Supreme Court of the United States

Supreme Court, U.S.  
FILED

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OFFICE OF THE CLERK

*In Re ABHIJIT PRASAD,*

*Petitioner,*

v.

KOMAL RATTAN,

*Respondent,*

**Petition For A Writ Of *Mandamus***

**PETITION FOR A WRIT OF *MANDAMUS***

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SUPREME COURT, U.S.

i. **REQUEST AND PURPOSE OF THIS PETITION**

Abhijit Prasad (“Petitioner”, “Husband”) humbly requests the U.S. Supreme Court to issue a writ of mandamus asking California Supreme Court to review his case in which a decision could be had or give court of last resort disposition acceptable to the U.S. Supreme Court. Husband is “in custody” and is currently serving a three-year term of supervised release (*see Case 3:18-cr-00368-CRB*).

Due to *Pro Se* nature of this filing, Husband respectfully requests that this Honorable Court provide a less stringent standard of review when examining Husband’s attempts at case citing, rules, procedures, and legal syntax. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Erickson v. Pardes*, 551 U.S. 89, 94 (2007).

ii. **EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THIS COURT’S DISCRETIONARY POWERS TO PREVENT MISCARRIAGE OF JUSTICE; NO ADEQUATE RELIEF CAN BE OBTAINED IN ANY OTHER FORM OR FROM ANY COURT.**

In this case, Husband’s multiple requests (see APPENDIX D) to review California’s First District Court of Appeals decision with the California Supreme Court, while he was in federal prison were repeatedly denied (see APPENDICES A, B). The State of California denied procedural and substantive due process by not granting Husband’s request for extension, thereby denying his rights to access to State’s highest court on appeal for his property matters when he was serving time in federal prison with no ability to counsel oneself or through an outside counsel. Husband requested the California Supreme Court to extend the “petition for review” filing deadline by two months because he was serving a Federal sentence at FCI Lompoc, CA and remained under strict lockdown (followed by

quarantine) since March 2020, due to COVID-19, which prevented him from filing any petitions <sup>1</sup> (see APPENDIX D). FCI, Lompoc underwent a very strict lockdown beginning March 25, 2020 due to COVID-19, around the time Husband was transferred there, causing cessation of his access to the law library or an outside counsel.

Husband was in communication with the California Supreme Court prior to expiry of their jurisdiction that gave court power to protect and exercise its jurisdiction. He last wrote to them on May 15, 2020 (see APPENDIX D), eight weeks before July 8, 2020 when the court would statutorily lose its jurisdiction. (see APPENDIX B). The California Supreme Court responded by stating that "If you are able to have both petitions for review with two separate "Applications for Relief from Default" reach the court before the loss of jurisdiction, court may permit it to be filed late. Once this court loses jurisdiction, it no longer has any authority to consider or grant any relief whatsoever in this case; no matter what reason you may have for submitting a late petition". (see Appendices A, B). Due to conditions at the prison, Husband then suffered a heart attack on July 15, 2010 at the Federal Camp Prison (see APPENDIX F). Husband was only released to home confinement on Aug 20, 2020, necessitating this request and his earlier requests to the U.S. Supreme Court. Husband's health condition has further deteriorated after his release. On December 2, 2020 and after examination, Husband's cardiologist Dr. Neal White stated that "His cardiac symptoms are currently being

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<sup>1</sup> Richard Winton, *Coronavirus Outbreak at Lompoc Prison is the Worst in the Nation: 69 Inmates, 25 Staff Infected*, LOS ANGELES TIMES (Apr. 16, 2020) available at <https://www.latimes.com/california/story/2020-04-16/coronavirusoutbreak-at-lompoc-federal-prison-is-worst-in-nation-with-69-inmates-25-staffinfected>; see also *Torres, et al. v. Milusnic*, CV 20-04450-CBM-PVC (Dkt #18)

evaluated with further testing. He is currently experiencing symptoms that preclude him from working. It is reasonable to at this time to qualify him for disability” (see APPENDIX G).

Considering the ongoing public health concerns relating to COVID-19, several courts have flexed their Court’s Rules and practices, including U.S. Supreme Court (see ORDER LIST: 589 U.S. filed 03/19/2020) extending deadlines for filing certain petitions. Some states like Hawaii had extended certain filing deadlines. The Supreme Court of Kansas has issued several orders and temporary rules in 2020 and 2021 to extend or suspend any deadlines or time limitations established by statute following extension of the State of Disaster Emergency related to COVID-19. However, the California Supreme Court refused Husband’s reasonable request (Husband had requested two months extension) to extend his petition for review filing deadline beyond what is permitted by statute by categorically stating that it could not let Husband file a late petition “no matter what reason you may have for submitting a late petition”.

ACLU-NC (American Civil Liberties Union, Northern California) that assists aggrieved individuals or parties with legal help and legal rights involving various matters in California, refused to help Husband, as it does not provide assistance in family law cases involving disputes about divorces (see <https://www.aclunc.org/our-work/get-help>). (“Family law/child custody - The ACLU-NC generally does not provide assistance in family law cases involving disputes about divorces, child custody, parenting time, or visitation”).

Husband has exhausted all options and no relief can be obtained in any other form or from any other court.

Husband requests the U.S. Supreme Court to consider one or a combination of strict pandemic lockdown and quarantine when he was in prison that prevented him to file any petition or hire counsel, his subsequent heart attack during the lockdown resulting in his disability and California Supreme Court's refusal as exceptional circumstances for the purposes of Rule 20.

Under the given circumstances and after reviewing Husband's request, the U.S. Supreme Court, on January 14, 2021, advised Husband of alternate options that he could use, including Rule 20 to address his grievance (*see APPENDIX E*).

iii. QUESTIONS PRESENTED

This is a case where the Alameda Superior Court, California egregiously departed from well-established California State laws and mandatory statutory requirements that all California Superior Courts are bound by when it failed to apply those California Family Laws and statutory requirements that resulted in a gross unequal division of property between Husband and Komal Rattan ("Respondent", "Wife"). The First District Court of Appeals, San Francisco failed as a court of law as well as a court of equity. The questions presented are:

1. Did the Alameda Superior Court, California err when it rejected the non-disclosure of a \$1.4M house bought and owned by Wife after legal separation in a dissolution case after discovering that Wife had purchased and owned the said property after legal separation and before Property Division trial?
2. Did the Alameda Superior Court, California err by allowing Wife's misappropriation of \$265,000 from the community property and parties' entire savings after admitting court-appointed forensic expert's findings as truth of the matter asserted?

3. Did the Alameda Superior Court, California err when it failed to set-aside the July 5, 2016 (2SCT1082-1177) and November 9, 2016 (CT682-687) property and support judgment motions respectively pursuant to Cal. Fam. Codes §§2100, 2120, 2121, 2122 et seq after Wife refused to file the Final Declaration of Disclosure after repeated requests?
4. Did the Alameda Superior Court, California exceed its jurisdiction, when it granted \$41,640.66 as spousal support to the Wife, after admitting into record that the Wife had remarried?
5. Did the Alameda Superior Court, California err by ordering eviction of Husband from his residence after he perfected his appeal and immediately after he was taken into federal custody without following the due process of law, and in violation of Federal and State constitution?
6. Did the First District Court of Appeal, San Francisco, which had the authority to fix the above issues, erred when it affirmed the trial court's decisions without addressing them or without providing any legal bases?

All the above questions must be answered in the affirmative. The above decisions are against California Family statutes and laws and the constitution of California and the United States. In all the above cases, the Alameda Superior Court, California rejected the statutory requirements. Compliance with the statutory requirements are imperatives of the American legal system that are not negotiable, unless the language of the statutes explicitly provision alternatives.

iv. **STATEMENT OF RELATED CASES**

- Property Trial Judgment filed June 9, 2016 (CT693-698) for Case Num: VF07356209, Case Name: *Komal Rattan v. Abhijit Prasad* by Superior Court of California, County of Alameda; Support Trial Judgment filed November 9, 2016 (2SCT1743-1753) (*Id.*)

- *K.R v. A.P*, No. A151036, A149624 (consolidated) (unpublished decision) (Alameda County Super. Ct. No. VF07356209), First District Court of Appeal, Division Three filed April 9, 2020 (*see APPENDIX C*)
- Letters from the California Supreme Court dated: May 1, 2020 and June 19, 2020 denying Husband’s request to extend the “petition for review” deadline. (*see APPENDICES A, B*)
- Letter dt: Jan 14, 2021 from the Clerk of The Supreme Court suggesting alternatives to Writ of Certiorari. (*see APPENDIX E*)
- Husband’s Heart Attack official confirmation while in prison. (*see APPENDIX F*)
- Husband’s Cardiologist’s letter confirming Husband’s ongoing treatment and his disability. (*see APPENDIX G*)

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**vii. OPINION BELOW**

The opinion below is an unpublished opinion i.e. *K.R v. A.P*, No. A151036, A149624 (consolidated) (Alameda County Super. Ct. No. VF07356209) of First District Court of Appeal, Division Three filed April 9, 2020 (see APPENDIX C).

**viii. JURISDICTION**

Under Supreme Court Rule 20, the U.S. Supreme Court is authorized to issue an extraordinary writ pursuant to 28 U.S.C. § 1651(a), § 2241 or § 2254(a). To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

## ix. STATEMENTS OF FACTS

In this case, without a court order or a good cause, and after parties had not waived the service of Final Declaration of Disclosure (2SCT3033-3034), Wife who was statutorily required to serve her final declaration of disclosure to Prasad, completed the property division and support liabilities trial (and had the Property and Support Judgments issued in her favor) without serving the Court or the Husband with her declaration of final disclosure and without filing her declaration regarding service of declaration of final disclosure. The trial court erred in entering property and support Judgments without a final declaration of disclosure from Wife (Cal. Fam. Code §2106) or without a waiver of the same by Husband. The trial court was statutorily required to set-aside the property and support judgments<sup>2</sup> and sanction Petitioner (refer *Marriage of Feldman* (2007), *Marriage of Rossi* (2001) 90 Cal.App.4th 34, 108 Cal.Rptr.2d 270 (“Rossi”)) (2SCT2001-2041) for concealing her remarriage and acquisition of \$1,358,500 house during and before the trial, both of which factor into support calculation and property division. Instead, the trial court did not characterize Wife’s \$1,358,500 house and ordered Husband to evict parties’ residence without following the due process of law given that Husband had perfected his appeal<sup>3</sup>. The Fifth

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<sup>2</sup> A Fam. Code. § 2120 et seq. Motion to set aside comprises a statutorily valid motion to vacate an appealable order or judgment. *In re Marriage of Varner* (1997) 55 Cal. App. 4th 128, 136-137 and can therefore appeal from it. See also *In re Marriage of Jones* (1998) 60 Cal. App. 4th 685, 689-695, relying on *Varner*. See also Hogoboom & King, J., Cal. Prac. Guide: *Family Law* (The Rutter Group 2016), Ch. 16, “Postjudgment Motions, Appeals, and Writs,” §16:299 at p. 16-106.

<sup>3</sup> In California Supreme Court decision, *Smith v Smith*, 18 Cal. 2d 462 (1941) the party to a dissolution action was asked to vacate the home after he perfected his appeal. Whereas the trial court attempted to issue

Amendment protects the right to private property by stating that a person may not be deprived of property by the Government without “due process of law,” or fair procedures. Petitioner’s counsel entered the property after he was detained by the Federal government on May 3, 2018 and emptied the house in his absence. Those acts and decisions left Husband homeless and Wife with two houses.

The non-disclosure of assets, in addition to Wife’s failure to serve her final declaration of disclosure (§2107(a)) and her failure to respond to Husband’s request for production of documents (§2107(b)(1))) required the trial court to set-aside the July 5, 2016 (2SCT1082-1177) and November 9, 2016 (CT682-687) property and support judgment respectively pursuant to Cal. Fam. Codes §§ 2120, 2121, 2122 et sec. But the trial court failed to do so resulting in gross inequitable division and distribution of property and support liabilities. The First District Court of Appeal also did not address this nonfulfillment of this statutory requirement.

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contempt on the party in Smith, the appellate court issued a writ of *supersedeas* and ruled that the order to vacate home was automatically stayed. The proposition that mandatory injunctions are stayed on perfection of appeal is also supported by additional case law. The case law states that whereas prohibitive injunctions, which are designed to maintain the status quo of parties are not stayed, mandatory injunctions are stayed. Prohibitive injunctions in the context of the dissolution actions are the automatic restraining orders that come into play in parties ability to change character or substantive values of the community property during pendency of the action. Clearly, those will not be stayed on appeal. But if orders are made for one party to vacate home, or to yield its control to a non-owner, an attempt is made to change the status quo of the party without him having recourse to appellate rights. These are affirmative acts ordered on Prasad and are automatically stayed. See *Paramount Pictures Corp. v. Davis*, 228 Cal. App. 2d 829 (1964). CCP §916, not excepted by CCP §917.4 (mandatory injunction). The *Smith v Smith* authority also involved a divorce based sale order for sale of property. The California Supreme Court still held that since he was ordered to perform an affirmative act, to wit, to vacate his home, the automatic stay applied.

With respect to non-disclosure of property, all California courts are required to sanction the party at fault. Three weeks before the property judgment was filed on June 9, 2016, Wife's attorney, Mr. Jason Elter willfully misrepresented to the court (with knowledge of its falsity), when he filed a pleading on May 20, 2016 by stating that "She [Wife] currently has no other assets or resources to rely on for support..." (CT676:¶2), while the Wife owned and lived in a house valued at \$1,358,500 house <sup>4</sup>. The Pretrial Order filed July 31, 2015 stated that "Any misrepresentation may result in a finding of contempt and imposition of civil or criminal penalties or both" (CT19), but the trial court took no action on Wife, instead denied Husband's July 5, 2016 and November 9, 2016 (CT682-687) set-aside motions, without offering any reason.

Furthermore, Wife committed perjuries, when none of her I&E (Income and Expense (FL-150)) declarations, that she signed under penalty of perjury mentioned about her \$1,358,500 asset under '11. Assets' or under any section (CT770:¶11.a.). Husband asserts that Wife's perjury in her I&E declarations, nondisclosure (Cal. Fam. Code §§2100(c), 2120(b)) and her violation of Section 2105(b)(2) <sup>5</sup>

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<sup>4</sup> Nine months after Property Judgment was filed and after Husband's repeated insistence based on certified county documents, Wife's attorney, Mr. Elter did concede to the purchase and ownership of the expensive house, when he stated that "And I believe it actually reaffirms Petitioner's [Wife's] testimony that, on March 18th, that property was purchased for the 1.358 and, at that time, Ms. Rattan [Wife] and Mr. Ghosh [Wife's new husband] took ownership" (RT 3.21.17:21:14-17). However, Wife's attorney again misled the court, as Wife provided no testimony during either trial (property as well as support) that she purchased and took ownership of the \$1,358,500 home (see RT 10.9.15, 10.20.15, 11.2.15, 11.3.15, 11.4.15, 11.5.15, 2.9.16, 2.10.16, 2.11.16, 2.17.16).

<sup>5</sup> Under the Family Code requirements of full disclosure, the husband's failure to disclose the values of the assets, or even to give

violated Cal. Fam. Codes statutory requirements and caused an unequal division of property between the parties. In re *Marriage of Jones* (1998) 60 Cal.App.4th 685, 695, 70 Cal.Rptr.2d 542 defines disclosure of the values of the assets where the community has an interest as “material facts”.

As per well-settled California laws, Wife’s failure to serve her final declaration of disclosure, and her nondisclosure of assets (community or separate as per §2120(a)), makes it a sanctionable act under Cal Family Code 2107(c), 1101(g), 271, *Marriage of Rossi* (2001) 90 Cal.App.4th 34, 108 Cal.Rptr.2d 270 (“*Rossi*”) and *Marriage of Simmons* (April 18, 2013) 215 Cal.App.4th 584 (“*Simmons*”) <sup>6</sup>.

Regarding the \$41,640.66 spousal support awarded to Wife, the trial court admitted that “that she [meaning Wife] participated in a

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the wife's accountants access to the information from which the value could be derived, constituted a violation of section 2105, subdivision (b)(2), which states that a final declaration of disclosure must include, among other things, "All material facts and information regarding the valuation of all assets that are contended to be community property or in which it is contended the community has an interest." (emphasis added) (In re *Marriage of Jones* (1998) 60 Cal.App.4th 685, 695, 70 Cal.Rptr.2d 542)).

<sup>6</sup> Per Family Code section 2107(c), the court "shall" award sanctions for any breach of a divorcing party's fiduciary duties of disclosure. For non-disclosure, the court may award at least one-half the value of the undisclosed asset (Family Code section 1101(g)). For non-disclosure of an asset, the court can award even 100% of the asset (*Marriage of Rossi* (2001) 90 Cal.App.4th 34, 108 Cal. Rptr. 2d 270). For concealment of even what is determined ultimately to be a separate asset or income to which FC §1101 sanctions do not generally apply, the court can sanction 100% of the asset (*Marriage of Simmons* (April 18, 2013) 215 Cal. App. 4th 584.).

ceremony, the result of which she believes has resulted in her marriage” (RT: 3.21.17: 8:3-5), after Husband produced several documents including the ‘Grant Deed,’ that showed that Wife took ownership of a brand new house as “Vivek Ghosh [her new husband] and Komal Rattan [Wife], husband and wife as community property with right of survivorship” (RT: 3.21.17:10:19-25; 2SCT1283-1288), valued at \$1,358,500 as “Vivek & Komal H/W” (meaning Husband and Wife), as a result of the change of control of ownership of the real property that took place on February 4, 2014 (RT: 3.21.17: 21:2-5: 22:15-18).). Husband asserted that going by the trial’s court’s statement, Wife’s marriage is presumably valid. (Cal. Evid. Code §663: “A ceremonial marriage is presumed to be valid”). Husband asserted that the trial court committed an error of law and exceeded its jurisdiction, when it awarded spousal support to Wife after her remarriage date, in violation of Cal. Fam. Code §4337 (“Except as otherwise agreed by the parties in writing, the obligation of a party under an order for the support of the other party terminates upon the death of either party or the remarriage of the other party”). The Court of Appeal did not address this issue, even though California Court of Appeals reviews error of law (covered infra).

The award of spousal support to a party with a court finding of Domestic Violence is also against California law. In this case, the trial court took judicial notice of the register of action of the court finding of domestic violence perpetrated by the Wife against Husband. (Case Num: HF13666390: RT 10.20.15: 71:7– 72:16). *In Marriage of Anand and Mary Kelkar* (B247085) (2014), applicable law directed the family court to consider “[d]ocumented evidence of a history of domestic violence” before ordering spousal support. In *Kelkars*, the Court of Appeal determined that there is a significant public policy against domestic violence. Granting spousal support to an abuser is

unconscionable and continues unjust enrichment. Spousal support orders in such domestic violence cases potentially force victims of abuse to remain dangerously entangled in the abuser's web of violence and intimidation. Refusal to enforce spousal support provision will further this policy against domestic violence because Mary Kelkar (likewise, Wife, in the instant case) will have fewer financial resources to continue her harassment of Respondent (likewise, Husband, in the instant case). The Court of Appeal also noted that enforcement of a support agreement requiring payment of spousal support to a perpetrator of domestic violence requires the abused spouse to "finance his own abuse". The Court of Appeal also pointed out that there is "nothing unfair about" relieving a victim of domestic abuse of an obligation that he provide financial support to his abuser. (Fellows, *supra*, 39 Cal.4th at p. 190). Indeed, the state has "a very substantial interest" in protecting such innocent persons. (Addison, *supra*, 62 Cal.2d at p. 567.). In *Kelkars*, the Court of Appeal even bypassed a stipulated court agreement that expressly declared that it was not modifiable. In this case, the Alameda Family Court made two errors of law by granting \$41,640.66 as spousal support to Wife who had re-married and who had a court finding of domestic violence against Husband after admitting that the Wife had re-married and had perpetrated domestic violence against Husband. Not only is this decision unlawful and unconscionable, **but it is also unprecedented, cruel and unusual.**

With respect to the misappropriated funds, the trial court also failed to reimburse \$265,000 transferred by Wife from the community account to her account. The trial court was required by California laws to award the misappropriated amount to Husband, which it failed to. The court-appointed forensic (RT 11.5.15: 62:12-13) CPA and 730 accounting expert, Mr. Hank Levy testified that he conducted an

investigation that involved tracing of funds (RT 11.5.15: 3:22 – 4:23) and found that \$265,000 that Wife alleged that Husband transferred from community property was drawn on Washington Mutual and returned to Washington Mutual, which is Petitioner's (Wife in this case) personal account. During his examinations, Mr. Levy chronicled the entire transactions as per his “Corrected Information and analysis” dated October 3, 2015 (Exh.140 (SEX173-174)) that was introduced by the Petitioner herself <sup>7</sup>. A check of \$265,000 was drawn but was never deposited into Prasad's [Husband's] account (Exh.140(SEX 174: transaction dt: 11/8/2007 (Stop Payment)). Mr. Levy specifically testified that \$265,000 never went to Prasad's [Husband's] account (RT 11.5.15: 52:9-11). Mr. Levy made the finding in his report that “It is interesting that the notification of return from Countryside states that the check was drawn on Washington Mutual” (Exh.140 (SEX174: point 1)). Wife testified that the Washington Mutual Account belonged to her and that she had no other account (it is also not a joint account, as per admitted subpoena production) (Trial Exhibit BL(SEX715); RT 11.2.15:90:6-13). Husband has never had any account in Washington Mutual and there is no record to suggest to the contrary.

The trial court failed to characterize the \$265,000 as “misappropriated” amount. Cal. Fam. Code §2602 states that “As an additional award or offset against existing property, the court may award, from a party's share, the amount the court determines to have been deliberately misappropriated by the party to the exclusion of the interest of the other party in the community estate”. The statutory

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<sup>7</sup> Court-appointed Mr. Levy's October 3, 2015 report was admitted as Exh.140 **for the truth of the matter asserted during the property trial** on November 5, 2015 by Wife's attorney himself (RT 11.5.15: 31:21 – 32:14) after Mr. Levy was direct, cross and re-direct examined by both parties.

language gives the court the power to assess an additional award from or an offset against existing property (see *Williams v. Williams*, 14 Cal. App. 3d 560, 92 Cal. Rptr. 385(1971)). The trial court also failed to act as a court of law as well as a court of equity, when it allowed Wife to walk away with \$265,000 (in addition to \$1,358,500 house) without any consequence, which is against the law and against the findings of the court-appointed forensic expert.

#### **x.      LEGAL ARGUMENTS**

California Court of Appeals review error of law. Whether a court erred in law is a question of law reviewed de novo. (*Wadler v. Justice Court* (1956) 144 Cal.App.2d 739, 744 ["The question presented was whether the justice court exceeded its jurisdiction which is a question of law"].). Whereas all other California districts (as covered supra and infra) are known to fix knowing non-disclosure of property and misappropriation of funds by one party, by appropriate sanctions, so as not to eclipse equal division of community property, the First District Court of Appeals, California, in this case, did not address the above issues stating that "Husband's claim that Wife had remarried and had acquired real property worth \$1.4 million had already been considered and rejected by the trial court". The trial court could not have rejected its own admission that Wife had remarried and its own decision where it admitted the findings of the court-appointed forensic expert for the truth of the matter asserted.

Appellate judges are required to follow the law. In *California Casualty Ins. Co. v. Appellate Department* (1996) 46 Cal.App.4th 1145, 1147, the Second District Court of Appeal observed, "This is a small case, as cases go, but it raises a significant principle: judges,

including appellate judges, are required to follow the law.” The same is true in case at bar.

California laws mandatorily require the courts to divide community property <sup>8</sup>, property acquired and owned by either party after separation and before trial, misappropriated funds by one party, to be divided 50/50 at the minimum with additional sanctions and attorney fees reimbursement in some cases. The 50/50 split is mandatory, and there are almost no deviations from equal division.

Every other District Court in California treats the failure to disclose assets as a focal point of divorce litigation. *In Marriage of Margulis*, 198 Cal. 4th at 1265, 130 Cal. Rptr. 3d at 336, the Court of Appeal discussed the “duty to disclose” and described it as “affirmative and broad obligation...that continue[s] to bind spouses after separation until final distribution of assets.” *Id.* at 1269-1270, 130 Cal. Rptr. 3d at 339-340. Based on this assessment of the duty of disclosure, the Court of Appeal remanded to “retry the issue of Alan’s alleged breach of fiduciary duties and revisit the question of the appropriate statutory remedies for any breach of duty it finds” *Id.* at 1283, 130 Cal. Rptr. 38 at 350. *Marriage of Rossi*, 90 Cal. App. 4th 34, 108 Cal. Rptr. 2d 270 (2011) was the first case to discuss the remedy found in Family Code § 1101(h) for breach of fiduciary duty. That section states:

Remedies for the breach of the fiduciary duty by one spouse, as set forth in Sections 721 and 1100, when the breach falls within the ambit of Section 3294 of the Civil Code shall include, but not be limited to, an award to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty.

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<sup>8</sup> In 1927, the California Legislature declared that the spouses’ interests in community property were “present, existing, and equal”.

The Court of Appeal explained that the “strong language” serves the important purpose of ensuring full disclosure of all assets. “A failure to make such disclosure is properly subject to the severe sanction of section 1101, subdivision (h)”. *Id.* at 42, 108 Cal. Rptr. 2d at 277.

A claim for breach of fiduciary duty means that there are potential damages that can eclipse equal division of property. Under § 1101(g), the remedy for the breach of fiduciary duty “shall include, but not be limited to” an award of 50% of an undisclosed or transferred asset plus attorney fees and costs.

With respect to the “misappropriated” amount, Cal. Fam. Code §2602 states that “As an additional award or offset against existing property, the court may award, from a party's share, the amount the court determines to have been deliberately misappropriated by the party to the exclusion of the interest of the other party in the community estate”. The statutory language gives the court the power to assess an additional award from or an offset against existing property (see *Williams v. Williams*, 14 Cal. App. 3d 560, 92 Cal. Rptr. 385(1971)).

The First District Court of Appeal did state that “[a]s a court of equity, a family court retains inherent jurisdiction to oversee and enforce execution of its decrees. This includes the broad powers under Code of Civil Procedure sections 128 and 187, which permit a court to compel obedience by all means necessary, and by any suitable process or mode of proceeding. (See, e.g. *Bonner v. Superior Court* (1976) 63 Cal.App.3d 156, 164-165 [court had power to order sale of property where one spouse failed to make equalizing payment to other]; *In re Marriage of Economou* (1990) 224 Cal.App.3d 1466,

1475-1476 [court had power to enter default judgment against non-compliant husband].)" (Opinion: 10).

In this case, the trial court had ordered that "The parties shall exchange **all** disclosure documents including Schedules of Assets and Debts and Income and Expense Declarations by January 9, 2009" (bold emphasis added) (AUG91-93¶12;2SCT3032¶12). Whereas Husband provided his final declaration of disclosure, tax returns, current Income and Expense – FL-150 ("I&E") declarations and even provided all his pre-marriage as well as his parent's assets from India (2SCT3372), Wife Provided none. Wife's attorney told the court that "And I don't want to hold this whole process up in tax returns that I don't think really, in the end, they are relevant." (RT 2.9.16:5:28 - 6:6). The Alameda Family Court, California was, therefore, required to enforce obedience with respect to its decrees, instead it proceeded with the support liabilities and property judgment trials without a final declaration of disclosure, I&E declaration and tax returns from the Wife. It also denied Husband's motion to compel discovery on Wife and proceeded with both the trials (e.g. the trial court stated "The [Husband's] discovery motion is also denied. I'm prepared to proceed with trial on the support issues" (RT 2.9.16: 5:7 - 7:10)). And after Husband filed Fam. Code §2120 et seq. motions to set aside the judgments that comprise a statutorily valid motion to vacate an appealable order or judgment, within the 60-day time prescribed by CRC Rule 8.104 to appeal from the judgment after discovering that Mother had re-married and also bought and owned a \$1.4M house neither of which she disclosed, the Alameda Superior (Family) court, California denied those motions. Not only did the Alameda Family Court failed to set-aside the judgments against the non-compliant party, it also failed to characterize and ensure equalization with respect to the misappropriated amount of \$265,000 and non-disclosure

of \$1.4 million homeownership by Wife, in addition to awarding \$41,640.66, to a married person who also happened to have a court finding of domestic violence against her spouse (Husband in this case).

#### **xi. REASONS FOR GRANT OF WRIT OF MANDAMUS**

The Alameda Superior Court, California court committed several errors of law, including exceeding its jurisdiction that led to unequal distribution of property which left Husband devastated and homeless. Husband was evicted from the house without following the due process of law (as covered *supra*). The Alameda Superior Court failed as a court of law as well as a court of equity (Cal. Fam. Code §2128(c)). The First District Court of Appeal which was required to address the above issues from statutory violation viewpoint and law (as covered *supra*) did not address them and “Affirmed in Full”, the trial court’s decision.

The California Supreme Court then disallowed Husband’s requests to extend his “petition for review” filing date even after learning that he remained under strict lockdown (followed by quarantine) since March 2020 due to COVID-19, which prevented him from filing any petitions. ACLU-NC (American Civil Liberties Union, Northern California) that assists individuals with legal help and legal rights involving various matters in California, refused to help Husband, as it does not provide assistance in family law cases involving disputes about divorces (covered *supra*).

The California Supreme Court, California Court of Appeals and its various districts have all provided case precedent that has established recognizable points of law that 1) requires setting aside the

judgment in case one party fails to file declaration of final disclosure, 2) prevents eviction once the appeal is perfected, 3) mandatorily requires termination of spousal support on re-marriage, 4) requires termination of spousal support to perpetrators of Domestic Violence, 5) requires sanctioning the party at fault in the amount of 50 to 100% of the asset value (with attorney fees) for non-disclosure of assets, and 6) enforces reimbursement of the misappropriated amount to the affected party and 7) staying eviction when a defendant has not abandoned his property and after he has perfected his appeal.

As covered *supra*, every other district in California treats the above issues very seriously and implements near uniformity in such cases. However, in this case, neither the Alameda Family Court nor the First District Court of Appeal addressed the above issues. The above issues make up 90% of the assets and liabilities in this case where the trial court failed to make equalizing payment to the other party and allowed one party to walk away with the entire assets without any consequences. For the remaining 10% property in this case, which included Epstein credits and Watts reimbursement, the trial court denied Husband's Epstein credits and granted Wife's Watts reimbursement, even though Wife lived with her boyfriend and current husband (*see* Appellant Opening Brief filed 7/18/2018 for Case A151036; Mother did not file Respondent's Brief). In the end, Wife got 100% of the property whereas Husband got 0% and was also evicted from the residence. The First District Court of Appeals that was statutorily required to set-aside the judgments and had the authority to fix those wrongdoings and abide by the statutory language simply brushed them aside. This conflict between the district courts makes this ideal vehicle to resolve the district split within the state of California, which is critically important to the fair administration of justice.

**xii. REQUEST AND PRAYER TO THIS COURT**

Based on the foregoing, Petitioner petitions this Court to issue a writ of mandamus for the California Supreme Court to review Petitioner's appellate decision (*K.R v. A.P*, No. A151036, A149624) or give court of last resort disposition acceptable to U.S. Supreme Court, so that the high court can properly exercise its jurisdiction. Husband believes that he has included all contentions in support of his petition in this petition and attached appendix.

Respectfully Submitted

Date: February 8, 2021  
Place: San Ramon, CA



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