

No. _____

**In the
Supreme Court of the United States**

=====◆=====

Charlie Zhao,

Petitioner

versus

Suzie Young,

Respondent

=====◆=====

On Petition for Writ of Certiorari
to the Supreme Court of California

=====◆=====

PETITION FOR WRIT OF CERTIORARI

=====◆=====

By Charlie Zhao, Petitioner and Appellant in pro per

PO BOX 3901, Alhambra, CA 91803

1018 S. Atlantic Bl., APT B, Alhambra, CA 91803

213-200-3817

charlieyzhao@hotmail.com

QUESTIONS PRESENTED:

Suzie alleged that I transferred \$124,317 to China *for investment purposes* during the marriage. Actually, it was for child support of my son Alan (1991-2004) and our intended adoptive daughter Cindy¹ (2002-2009). Suzie disposed of \$382,408 from 2006 to 2009 for alleged gambling loss, buying household supplies without receipts, etc. So, she had the Alhambra Police arrested me on 03/02/2012, making a domestic violence (DV) case against me to divert the Court's attention away from her fund misappropriations.

She took her bifurcation issue of my fraud in inducing her to marry all the way to the California Supreme Court with Appeals Court Case#: B253721 and California Supreme Court Case#: S225018, which was her 2nd diversion tactic to cover up her fraudulent financial dealings.

Judge Byrd adopted Suzie's versions of the testimonies and omitted my child support duties for both Alan and Cindy and arrived at the grand finale that I breached my fiduciary duty by sending money to China. The total penalty levied against me was \$247,999. Judge Byrd also compromised me by about

¹ Cindy is our intended adoptive daughter, but the adoption was not finalized before separation. My parents adopted her as an interim measure in July 2002.

\$366,087 in all the other areas of our community assets.

The Appeals Court got the right overall impression that I had children to support: Cindy became controversial, but Alan was my undisputed child. But, instead of acknowledging that Judge Byrd made a clear error of omission, the Appeals Court gave Judge Byrd's Footnote #7 in her Decision a BRAND NEW *intendment* that she did not really intend at all by declaring that:

"The trial court acknowledged husband's child support obligations to Alan, and concluded that husband's transfers to support Alan did not violate Section 1100, subdivision (b)." (Appendices P12:32-P13:4, Opinion P10:16-19).

Their inference of Judge Byrd's Footnote #7 fits neither the CONTEXT where it originated, nor the entire TEXT of the Decision that they upheld.

In her answer to the California Supreme Court, Suzie believed that denying my child support duties was *Judge Byrd's proper discretionary sanction* against me for my "*Misconduct*" in the Courtroom, consistent with her denying my child support payments during the entire trial.

Judge Byrd also deemed my drafting the QDROs² to have our retirement benefits divided "*Husband's*

² Qualified domestic relations orders

Misconduct". The Appeals Court chose to be silent on this critical issue.

The questions presented are:

1. An appeal is NOT a retrial. The Appeals Courts' judgment as quoted above, which was opposite to the Trial Court's Decision, likely constitutes a retrial. Was the Opinion the outcome of a prohibited retrial?
2. Omitting critical issues is likely invalid appellate practices because the skipped issue of my drafting the QDROs or the "*Husband's Misconduct*" Section of the Decision was significant to the punitive Decision. Did the Appeals Court abuse the Appellate Rules by skipping this issue?
3. By citing DV NINE times in her Decision, did Judge Byrd compromise my 6th amendment rights in her handling of Suzie's unsubstantiated DV allegations?
4. Do 29 U.S.C. §1056(d) and 26 U.S.C. §414(p) confer me the legal rights to draft the QDROs, which Judge Byrd denied me of in the "*Husband's Misconduct*" Section of the Decision?

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1. On Appeal from the Order denying the
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BASIS FOR JURISDICTION:

Justices Rubin et al. of the California Appeals Court affirmed the Trial Court's Decision on October 10, 2017. They denied my timely filed Petition for Rehearing on November 3, 2017. The California Supreme Court denied my Petition for Review without opinion on January 17, 2018. This Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

**CONSTITUTIONAL PROVISIONS AND US
CODES INVOLVED**

The 5th Amendment to the US Constitution:

The Courts deprived me of my fair marital property rights with a deeply unjust process.

The 6th Amendment to the US Constitution:

I have the right to a fair trial, and I, the accused person for DV, am innocent until proven guilty, not the other way around.

5 U.S.C. §706 - Scope of review

29 U.S.C. §1056(d)

26 U.S.C. §414(p)

TIMELINESS:

On February 6, 2018, this Court returned my timely filed **Petition for Writ of Certiorari** for a few specific areas of noncompliance with the Court Rules. So, this Court gave me 60 additional days to submit corrected copies on or before April 7, 2018.

STATEMENT OF THE CASE: An appeal is not a retrial: The Circuit Split

Luckily, I found one case, Cresto v. Cresto, Supreme Court of Kansas, 358 P.3d 831 (2015), which mirrors my case in a very important way which I would discuss further below. So, a Circuit Split did exist when the Appeals Court exceeded the scope of appellate review.

Therefore, the next questions for my dear reviewers of this Court to decide are: Did the Appeals Court err in handling my appeal? Did the error of the Appeals Court constitute a retrial of my case, or was their error the outcome of a retrial? Does my case have any national importance to warrant a Writ?

OF QUESTION #1: The Opinion repaired the Trial Judge's omission of my child support obligations to my son Alan:

Here is what I told the Appellate Justices on P10:5-8 of my Opening Brief:

Here is Alan's brief Biography:

Date of Birth: 6/1/87, with Qi Yun as his Chinese first name.

Date of Alan's arrival in the USA: 8/31/04

(Page 1)

Here is a paragraph of the Decision where footnote #7 originated (2nd paragraph of App. 64 = the last paragraph of P13 of the Decision):

“In addition, Husband was giving gifts of community funds to his parents and his sister on a monthly basis without Wife’s written consent. ⁷ The amount was \$1,000/month for his parents and \$800/month for his sister Cindy from 2005 to separation in 2009, a total of about 4 ½ years, or \$97,200.”

Here is the actual footnote #7 (App. P64 = P13 of the Decision):

“⁷Footnote: Wife also contends that Husband improperly paid for the expenses of his son with community funds. Because Husband’s legal obligations to support his son, the Court finds that the absence of written consent for these payments does not violate Family Code 1100(b).”

You may have found out that Judge Byrd’s footnote #7 as quoted above clearly addressed the expenses that I paid for my relatives (*my parents, my sister Cindy, and my son Alan*) **here in the US from 2005 to 2009.**

Here is the Appeals Court’s key finding (App. P12:32-P13:4 = Opinion P10:16-19):

"The trial court acknowledged husband's child support obligations to Alan, and concluded that husband's transfers to support Alan did not violate Section 1100, subdivision (b)."

So, I do not think that it is very difficult for me to convince this Court that the Appeals Court clearly erred by declaring that Judge Byrd acknowledged my child support obligations to Alan per her footnote #7 as quoted above because there were two critical mismatches:

The venue: to China vs in the USA

The timeline: 1987-2004 vs 2005-2009

From 1987 to 2004, I sent money to China for child support to Alan; and from 2005 to 2009, I paid college expenses for him here in the USA. Therefore, Judge Byrd clearly acknowledged the college expenses that I paid for Alan in the USA from 2005 to 2009, NOT really the child support money that I sent to China from 1987 to 2004. I disputed the venue and timeframe on P14:23-P15:2 of my Petition for Review.

So, there is little doubt that the Appeals Court erred badly in arriving at the above key finding.

I have no doubt that the four Appellate Justices¹ were four bright Judicial minds who were more than fully capable of reading and comprehending Judge Byrd's Decision, the entire records in this case, my Opening Brief, and my Petition for Rehearing. They claimed that they read and understood my case. I had no doubt about that.

If this premise is absolutely true, why did they come up with their key finding as above that was nowhere to be found in the Decision? Was their erroneous finding a deliberate gimmick to perpetuate unfairness and injustice then? Is it fair to say that their erroneous finding is beyond erroneous, and it is simply egregious? Their egregious finding was likely intentional and calculated because I am a pro se layperson who has no money, no power, and no fame; and whose case did not make any national headline. So, they knew that neither the state nor the US Supreme Court would grant my case a review or writ.

Contrary to what Suzie stated in her Answer to the California Supreme Court, I believe that no Trial Judge of the (Family) Courts should have had the discretion to sanction a party by omitting the party's (my) child support obligations, or by taking the party's (my) child support payments out of the equation of the fund transfers, and then turn around

¹ Adding the PRESIDING JUSTICE TRICIA A. BIGELOW who did not put her signature on the Opinion.

to punish the Court's own creation - the said party's (my) alleged ***breach of fiduciary duties*** (for sending child support payments to China during the marriage). This error of omission of my child support duties for my son Alan by the Trial Court (the Court) is possibly one of the most egregious judicial errors ever in the short history of this young nation, which was my #1 issue on appeal covered on P10-14 in Section 2.1 of my Opening Brief with the subtitle:

"2.1 The Court omitted my child support duties for Alan, Appellant's biological son."

I argued verbally in the Appeals Court on 09/26/17 that Judge Byrd omitted my child support obligations (to both Alan and Cindy) in the Decision, among other critical errors.

I was in shock when I read the key finding in the Opinion as above.

I reiterated the Court's critical error of omission in Section 2.3.1, P29-31 of my Petition for Rehearing with the subtitle:

2.3.2 My key obligations for child support of my biological son Alan also became invisible to the Trial Judge:

The above egregious finding was my chief complaint covered in Sections A and B on P7-28 of

my Petition for Review to the California Supreme Court. Here is how I stated my issues on appeal on P7-8 of my Petition for Review:

A. Issues on appeal:

I would like you to determine the following major issues:

1. In the Opinion: Justice Rubin's finding (Opinion P10:16-19):

"The trial court acknowledged husband's child support obligations to Alan, and concluded that husband's transfers to support Alan did not violate Section 1100, subdivision(b)."

Please determine if Justice Rubin's above finding

- Contradicts Suzie's testimonies and the DECISION on this issue;*

- Contradicts his own position that (Opinion P8:23-24):*

"It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility." (Ibid.)

The California Supreme Court denied my Petition without issuing any Opinion.

So, I preserved this issue well throughout the appeals process.

My reasoning is that the above finding was the Appellate Justices' overall impression after reviewing the entire records, but they attempted to transplant their key finding onto the Decision, taking advantage of, or misled by if inadvertently, Judge Byrd's equivocal footnote #7, to declare that their key finding was consistent with that of the lower Court.

I know that my case is very small on the national level, but the errors that the judicial officers displayed in handling it is likely very significant even on the national stage. I believe that the egregious finding of the Appellate Court as above went beyond a retrial. They quoted a case law of In re Marriage of Arceneaux (1990) 51 Cal.3d 1130, 1133, but I do not think that any reasonable (case) law would have given them the green light to come up with their egregious finding as above which appeared much like the mud that the bridge inspectors put in/on a crack, and declaring that the bridge is now safe to pass, endangering the lives of all future bridge passers above and below.

The Appeals Court Justices sit near the top of the judicial pyramid of the USA carrying on their shoulders the sacred duties of assuring that each and every case landing on their desks is properly handled to deliver a fair and just outcome, therefore, a fair and just society at large. So, their job is no less important than the bridge inspectors'.

Ironically, by declaring the above finding to mask the Judge's critical error of omission, the Appeals Court erred much like the bridge inspectors putting mud in/on the cracks, exceeding the scope of their review, and perpetuating unfairness and injustice as a consequence, quite the opposite of what they were expected to do.

The Appellate Court's above finding also reminded me of an ancient Chinese idiom:
POINTING TO A DEER, CALLING IT A HORSE²

The above Chinese idiom summed up how the Qin Dynasty, the first unified China, demised.

Of course, Judge Byrd's failure to give me credit for child support payments was not a deer, and the Appellate Justices' erroneous finding as above was not a horse. However, are there remarkable similarities how people used their overwhelming positions of power to distort the truth? Is it an issue of national importance if one person (Mr. President), or a group of the most elite Americans of an elite profession of law who had the power to make or break people's lives, acted as if he was or they were above the law and the truth? Would it be a national highway safety crisis if putting mud in/on the cracks were a better option or more rewarding for the bridge

² You may google it to find the origin of this idiom if you are interested in knowing more.

inspectors than coming up with thorough and honest inspection reports of the conditions of the bridges? If this Opinion stands as the final words, would it just be my personal loss of property, reputation, fairness, and justice; or would it have much larger ramifications that America as a nation is losing out in fairness and justice because of the lack of accountability for the bad judicial officers doing the exact opposite of what the people expected them to do? Is it the responsibility of this Court to catch and remedy judicial decay of this sort?

It seemed to me that the Appeals Court had come up with their own theory already even before the oral argument on 9/26/17 because Justice Bigelow stopped me from talking quickly. Justice Rubin did not express any difficulty in issuing his egregious Opinion, which is an indication that manufacturing injustice in this fashion is the norm, not the exception for them. Would their bad judicial practice erode the foundation that this nation was built on by the founding fathers if this failure of doing their jobs properly or corruption is left unchecked?

OF QUESTIONs # 2 and #4: The Appeals Court dodged the issue of my drafting the QDROs or the “*Husband’s Misconduct*” Section in the Decision:

I covered this issue in Section 3.2 of my Opening Brief on P64-71. I stated that Judge Byrd's overreaction to my draft QDROs in the courtroom "mortally damaged my claims" (P65:7-8).

Due to the Appeals Court's silence on the issue in the Opinion, I highlighted this single issue in my Petition for Rehearing (P9-24) in Part 1 with the subtitle (P9):

"Part 1: The Trial Court's failure to properly apply the applicable laws governing the date of, and the draft qualified domestic relations orders or QDROs as an option for, the division of the parties' retirement funds:"

I listed the Court's violation of 29 U.S.C. §1056(d) and 26 U.S.C. §414(p) in my Petition for Rehearing on P5, P11-12 under the subtitle:

1.1 The Trial Court's failure to apply 29 U.S.C. §1056(d) and other relevant laws:

In my Petition for Review, I covered this issue of my drafting the QDROs or the "*Husband's Misconduct*" Section, or the Court's violation of 29 U.S.C. §1056(d) and 26 U.S.C. §414(p) on P5, in Section C (P18-33) with the subtitle:

"C. A review of the law de novo may be warranted in my case."

With the Court's violation of 29 U.S.C. §1056(d) and 26 U.S.C. § 414(p) covered in detail on P22-23 with the subtitle:

C.2 What caused the misdiagnosis? The Court's failure to apply two federal laws to my draft (Q)DROs: 29 U.S.C. §1056(d) and 26 U.S.C. §414(p):

The invalidity of dodging/skipping a critical issue is easily demonstrated by common sense or by using different analogies, such as running a marathon as below:

Suppose the starting and finishing lines are both inside the stadium, and the athletes would encircle the city along the entire course to run back to where they started. If a small group of smart runners decided to outsmart the system by taking a short cut, or by skipping a difficult stretch of the course to get ahead, would their final scores or times be valid? Would it be fair to the other runners who ran the entire route as prescribed if this group's skipping a difficult stretch is judged valid? What kind of examples would they have set for all the spectators and the audiences/viewers across the country or even in the whole world? What kind of example would the Decision/Opinion set for hundreds of thousands of lawyers, law students, and the general public across the country who may be searchers/researchers of this case?

OF QUESTION #3: I covered Suzie's unsubstantiated DV claims in Section 3.1, P59-64 of my Opening Brief with the subtitle:

*3.1 Suzie's false claims of DV and the
Court's prejudicial handling of it:*

I covered the DV issue in Section D2 P34-36 of
my Petition for Review with the subtitle:

*D.2 The Court's **prejudicial** handling of
Suzie's alleged DV charges against me, in
violation of my fundamental 6th Amendment
rights of the US Constitution that I was presumed
innocent until proven guilty*

**FURTHER REASONS FOR GRANTING
THE WRIT**

I hope that I have constructed the framework
for Reasons for Granting the Writ as discussed so far.
Please allow me to address each question
individually by adding some more details as below:

**Question #1: Did the Appeals Court exceed the
standards of review by retrying my case in
their Opinion in violation of 5 U.S.C. §706 -
Scope of review?**

1.1. The Appellate Rules:

"An appeal is not a retrial."

1.2. They reweighed the evidence:

Unlike what the Trial Court did, my **child support** obligations for my son Alan may be too big and too heavy for the Appeals Court to ignore, too. If they reversed the Court's bad Decision for being clearly erroneous due to this egregious error of omission, it would have been a great ending to my appeal. But they did not. They came up with a completely different theory from the Trial Court's chief finding, mounting to a prohibited retrial as below:

1.3. They retried my case:

Should I applaud their recognition of my **child support** obligations for Alan while the lower Court clearly failed to do so? No. They did not intend to deliver me justice, but to seal my mouth so that I would stop complaining about the Court's critical error of omission of my **child support** obligations to Alan.

This erroneous NEW judgment of the Appellate Court is nowhere to be found in the entire 18-page TEXT of the Decision (Appendix P36-73) because it was devoid of the phrase "**child support**".

It is deceptive that the Opinion resembles the Decision so closely because it was largely a product of copying and pasting of the Decision, but it **contradicts** the Decision because the Appellate Justices' chief inference as quoted on P2-3 above

cannot coexist in harmony with the Decision that they upheld. In fact, no reasonable person could possibly reconcile these two documents because they are simply irreconcilable, and the Appellate Justices' egregious inference did not quite mix well either with the rest of the excerpts that they copied and pasted from the Decision.

I do not think that the Appellate Justices even tried to check/doublecheck if their inference fit the Decision. As you may have realized, their chief finding was pretty much the opposite of the key finding (regarding the purposes of my fund transfers to China during the marriage) of the Decision as below:

The chief findings of the Trial Court:

"Husband was diverting funds away from the community - to his parents, to his sister Cindy, and to unknown people in China - without Wife's knowledge, without Wife's written consent, in violation of his fiduciary duties,"
(Appendix P66:11-16 = Decision P14:3-6 of the last paragraph).

"During the marriage, Husband gave lavishly to his extended family, transferring at least \$77,000 to China without Wife's consent."
(Appendix P41, last paragraph = Decision P3:7-8)

The Trial Court was erroneous but consistent in her wrong judgment because every part of the Decision served the erroneous grand finale that I transferred money to China to *give away to my extended family and for investment purposes* during the marriage in violation of my fiduciary duties.

It is true that **child support** payments are *expenses*, but *expenses* are not necessarily or always **child support** payments. The Appeals Court failed to make this simple but crucial distinction because it appeared to me that their priority seemed to be to come up with any sort of justification to affirm the bad Decision as Justices Rubin et al. stated in their Opinion by quoting the Arceneaux case (Appendix P11:2-7 = Opinion P8:24-28).

In reality, the Court's Footnote #7 was Judge Byrd's official answer to Suzie's reimbursement claims for the college expenses that I paid for Alan in the USA as listed in her Exhibit # 41³ because the last paragraph on P13 of the Decision as quoted above, the **CONTEXT** where Footnote #7 originated, was specifically addressing the alleged expenses that I paid for my relatives → my parents, Cindy, and Alan → all **in the USA**, NOT in China *from 2005 to separation in 2009, NOT from 1987 (when Alan*

³ Suzie's Exhibit #41 was not admitted. She asked me for about \$80,000 of reimbursements. The related trials took place per RT1572:8 to RT1581:4 on 12/7/2015 and RT1801:18 to RT1808:6 on 12/8/2015.

was born) to 2004 (when Alan came to the USA).

Only because Cindy was not in the USA during this particular timeframe (*from 2005 to separation in 2009, a total of about 4 ½ years*), and she came to the USA on 10/20/2009, The Appeals Court realized the duplicate nature of the charges and overturned the \$43,200 penalty levied against Cindy's living expenses in the USA.

1.4. The Appeals Court repaired Suzie's, the prevailing party's credibility on the pivotal issue of the purpose of my fund transfers to China:

My parents (Haiman Zhao, father; Ke Jin Ai, mother) and my sister Qinglan Zhao raised my son Alan in China from 06/01/1987 (his date of birth) to 08/31/2004 (on Alan's visa to enter the USA) or for 17 years and 3 months. He was born from my previous marriage to my ex-wife Li Lin. His mother Li Lin did not raise him. So, during my subsequent marriage to Suzie when I sent child support payments to China, the recipients were either my father Haiman or my sister Qinglan, not my ex-wife Li Lin.

Suzie took advantage of this special arrangement by telling Judge Byrd that the money that I transferred to China was sent to my *extended family members for investment purposes*.

Suzie did not acknowledge my child support duties either for Alan or for Cindy throughout the trial. She knowingly misrepresented that I sent the \$77,000 during the marriage or the \$124,317 up to the date of trial to China *for investment purposes* or to give away to my "extended family members" -> my father Haiman and my sister Qinglan (RT15:10-20). She also alleged on other occasions that:

"He wired so much money China, investing in China. The total sum of that money is more than one million Chinese currency." RT979:10-12.

"... -- his father would put the money into CD account to earn some interest. For example, on Exhibit 40, page 2 of 9, and this only one example." RT981:15-17.

"Originally, when he sent the money back home is for investment purpose. It's not meant for his father to use it." RT984:1-3.

Because Judge Byrd deemed Suzie being the credible party, she adopted her testimonies on every issue, including the purposes of my money transfers to China as evidenced by:

"Husband also received funds back from China in the amount of \$26,485 and did not share them with Wife. Wife claimed that these funds were a return on funds he had sent to China for

investment purposes." (Appendix P63:25-P64:2
= Decision P13, 4th paragraph).

A fair question for me to ask the Appeals Court is this: Who should the reviewers believe on this critical issue of the purposes of my fund transfers to China, Suzie and Judge Byrd or Justices Rubin et al.? Whose position is more original? Would this critical discrepancy occur if the Appeals Court did not retry the case as they claimed?

In affirming the Decision, the Appeals Court must have also upheld the Trial Court's finding that Suzie was the credible party.

How did the Appeals Court reconcile their finding that *the Trial Judge acknowledged my child support obligations to Alan* with Suzie's testimonies on this pivotal issue that I sent the money to China *for investment purposes*? Did they view Suzie's testimonies on this critical issue as being not credible? Why would they still have chosen to affirm the Decision and thereby upheld Suzie's credibility on every issue, including this crucial one, too? Did the Appeals Court engage in repairing Suzie's credibility on this important issue?

In conclusion, the Appeals Court really retried my case because they reweighed the evidence; they clearly repaired Suzie's credibility on this critical issue; and they clearly substituted their own

judgment (*The Trial Court acknowledged my child support obligations for my son Alan*) for the Trial Court's Decision (*fund transfers to China for giveaways to my extended family and for investment purposes during the marriage in violation of my fiduciary duties*).

1.5. The Appeals Court failed to follow through on their erroneous inference of the Court's Footnote #7:

If the Appeals Court's inference of Footnote #7 were valid, and only IF Judge Byrd had really acknowledged my child support obligations for Alan as they egregiously concluded, what remaining portion of the alleged \$124,317 fund transfers would still have warranted their affirming Judge Byrd's *breach of fiduciary duty* judgment against me? Remember that Judge Byrd said that for the expenses on Alan, I did not need Suzie's written consent per her footnote #7?

The Appeals Court came up with another egregious speculation that due to my failure to *parse out* what portion of the alleged \$124,317 funds went to Alan vs. what portion of it went to Cindy (Appendix P13:15-P14:2 = Opinion P10:28-P11:12) so that Judge Byrd had no choice but to levy the whole amount of \$124,317 into the total amount of penalties of \$247,999 against me. However, Judge Byrd did not express such difficulty at all in figuring

out the amount of total penalties because my child support duties were not her consideration at all, and she did not really need that piece of information.

This is another example of the Appeals Court isolating the Trial Court's equivocal Footnote #7 from its TEXT and CONTEXT and using their judgment to make erroneous assumptions and using "mud" to patch the gaping holes in the Trial Court's Decision.

So, instead of remedying the Court's egregious error of omission, the Appeals Court made the egregious error of wrong judgment of their own, mounting to a prohibited retrial!

1.6. Discussion: There was a clear Circuit Split between the California Supreme Court and the Kansas Supreme Court on the issue of the Appeals Courts exceeding the standards of review in violation of 5 U.S. Code §706 - Scope of review:

In Cresto v. Cresto, Supreme Court of Kansas, 358 P.3d 831 (2015), the Cresto children petitioned for review by the Kansas Supreme Court, claiming that the Appellate Panel of Justices exceeded the standard of review by making their own findings of fact and reweighing the evidence. The Kansas Supreme Court agreed with the Cresto children's argument that the Appellate Justices

impermissibly reassessed witness credibility and reweighed the evidence on the undue influence issue. Therefore, the Appeals Court's Opinion on this issue was reversed and the District Court order was affirmed.

This case gives my case strong merit for a Writ because there is a clear Circuit Split here between the California Supreme Court's denial of my Petition and the Kansas Supreme Court's reversal of the Opinion of the Appellate Court in the Cresto children's case.

The Appeals Court in my case clearly exceeded the standard of review by substituting the bad Decision (my sending money to China *for investment purposes in violation of my fiduciary duties*) with their own bad Opinion (*Judge Byrd acknowledged my child support obligations for my son Alan*).

My case has strong merit because I also believe that the appellate law is the mother of laws that makes all the other laws of the land of the Old Glory work properly for the people. So, I think that it should be the priority for this Court to catch and remedy such cases of the Appeals Courts' egregious violations or abuses of the appellate rules.

1.7 Is denying my child support obligations from my previous marriage the appropriate

sanction for my alleged “*misconduct*” in the Courtroom?

You may wonder why my child support duties could be totally ignored in a DIVORCE case in the FAMILY court, but it really happened due to Suzie’s misrepresentation.

Suzie did not attempt to deny Alan’s existence altogether because she acknowledged that he lived in our Alhambra residence from November 2004 to August 2008 (RT906:9-10). She made DV claims against Alan, too (Appendix P40:14-15 = Decision P2:5-6 of 4th paragraph).

In the last paragraph of P10 of her Answer (not attached, not accepted by the California Supreme Court due to untimeliness), Suzie stated:

“... Husband did not report to Court that he had a son in the marriage of Chao vs Lin, divorce cased #D218324. On the other hand, Husband claimed child support for Alan in the marriage of Zhao vs Young. Importantly, Husband conducted fraud and perpetrated perjury, the child support claim should not be upheld or the Court has the right to exercise its description sanction for Husband’s misconducts.”

Therefore, Suzie continued to believe that Judge Byrd did the right thing to have omitted my

child support duties for Alan because I used the simplified version of divorce (summary dissolution which couples with children were not supposed to use) in my previous divorce case #D218324 with my ex-wife Li Lin. Her accusation of fraud was denied in Appeals Court Case#: B253721 and California Supreme Court Case#: S225018.

Her second theory above appeared that Judge Byrd's failure to acknowledge my child support obligations for Alan was the FAMILY Court's appropriate *discretionary sanctions* against me for my alleged *misconducts* in the Courtroom.

If Judge Byrd, the author of the Decision, could have commented on if she considered my child support duties for Alan in her Decision, or what she really meant in her Footnote #7, she would have definitely said something very similar to what Suzie said as above because her Decision on this pivotal issue was the exact duplicate of Suzie's testimonies.

Suzie's Answer is further proof that the Appeals Court's inference of Judge Byrd's Footnote #7 was absolutely wrong.

I was unable to find a case law in which the FAMILY Court completely omitted a party's child support obligations from a previous marriage to arrive at such an erroneous finale of that party's

breach of fiduciary duty for making child support payments during the subsequent marriage. So, Judge Byrd's Decision may be one of the most egregious of its kind, not only in California but likely in the entire country.

Question #2: Did the Appeals Court abuse the Appellate Rules by dodging the critical issue of how Judge Byrd handled my technical evidence, my draft QDROs? What should have been the proper remedy when Judge Byrd's misconstruction of my draft QDROs fatally injured my case?

2.1 The Appellate Court dodged the issue of my draft (Q)DROs:

I was unable to find a case law in which the Appeals Court dodged an important issue in the Opinion. So, this case might be a precedent in this regard as well.

I understand that the Appeals Court did not have to comment on every minor issue raised in my Opening Brief. But my draft QDROs issue was too important for them to skip.

As I discussed in Section C starting on P18 of my Petition for Review, Judge Byrd's misconstruction of my draft (Q)DROs fatally injured

my entire case, mounting to a “sentinel event⁴” in judicial malpractice as how I put it.

But the Appeals Court’s Opinion failed to address Judge Byrd’s Decision on this critical issue, NOT even one word. I covered the issue of my draft (Q)DROs in Section 3.2 of my Opening Brief titled “*Judge Byrd mischaracterized the true nature of my draft QDROs*”, starting on P64, claiming that Judge Byrd’s overreaction “*mortally damaged my claims*” (P65:8)

Here is Judge Byrd’s courtroom reactions to my draft (Q)DROs (RT926:24-26):

“The Court: Do I have this right? That you were trying to get money from Ms. Young’s retirement account without coming to court and getting it approved by the court?”

Please see Section III. C. 6. on P10 of her Decision or Appendix P57 titled “*Husband’s Misconduct*”, Judge Byrd’s summary of what transpired in the trial, for details of her mistakes of my draft (Q)DROs.

⁴ From Wikipedia, the free encyclopedia. A Sentinel Event is defined by The Joint Commission (TJC) as any unanticipated event in a healthcare setting resulting in death or serious physical or psychological injury to a patient or patients, not related to the natural course of the patient's illness.

I focused sharply on this one single issue of my draft (Q)DROs and all the laws that Judge Byrd potentially violated in mishandling this issue in Part 1 (P9-24) of my Petition for Rehearing, and the Appeals Court denied it anyway.

This draft (Q)DROs issue alone clearly had the potential to invalidate the Court's Decision, and the Appeals Court's failure to address it was a critical error of omission which should have rendered their Opinion invalid, too because if they had the discretion of dodging a particular issue that they do not wish to tackle, or that they are not comfortable with for some reason that only they knew, no standards of review would work for any appellants like me.

In addition to the above example of running a marathon, another quick example is when taking an exam, will any examinee get credit for skipping a difficult question?

2.2 How did Judge Byrd misconstrue my draft (Q)DROs?

In handling my draft (Q)DROs, Judge Byrd made a series of legal errors that totally damaged my credibility, therefore my entire case, beyond repair.

A review of the laws de novo may have been highly warranted on the issue of my draft (Q)DROs. But the Appellate Justices declined to comment on it.

Judge Byrd misconstrued my honest attempts and hard work in drafting the (Q)DROs as a *misconduct*, which caused the demise of my entire case. Please see Petitioner's Exhibits #52 attached to the Petition for Rehearing and #50, draft QDRO for Suzie's LACERA⁵ reattached as P3-6 of the attachments to my Petition for Review.

Parallel to a medical "sentinel event", where the medical practitioner(s) must have failed to follow one or more established protocols of best medical practices, it was truly astonishing for me to tally all the local, state, and federal laws governing the draft (Q)DROs that the Court may have violated!

These errors are NOT like the mathematical errors of 50% of Judge Byrd's assumption vs the actual 32.44% of Suzie's separate property portion of LACERA that I proposed to take (P66-67 or Section 3.2.2 titled "*What percentage did I ask for?*" in my Opening Brief).

Please refer to Table 1 below for a list of the laws that the Court violated in rendering her ruling of "*Husband's misconduct*".

2.2.1 (Question #4) The Trial Court's failure to apply 29 U.S.C. §1056(d) and 26 U.S.C. §414(p) to my draft (Q)DROs:

⁵ Los Angeles County Employees Retirement Association

Both 29 U.S.C. §1056(d) and 26 U.S.C. §414(p) confer me, the ex-spouse the legal rights to draft the (Q)DROs. However, when I presented all my draft (Q)DROs on 11/24/2015, and when I proceeded to present Suzie's Horizons⁶ (Petitioner's Exhibit #52, beginning at RT925:9), Judge Byrd scolded me by stating what I quoted on P25 of this Petition (RT926:24-26).

Suzie poured gas on the fire by saying (RT927:8-9):

"The Respondent: No. In fact he was trying to steal money from me."

Judge Byrd replied (RT927:10-11):

"The Court: Well, it is - - it is what it is. It's a bit astonishing."

I did not fully comprehend the gravity of Judge Byrd's mistakes of my draft (Q)DROs until much later. She was accusing me (of invading her authority) to try to get (a diplomatic word for steal) Suzie's retirement money.

Was there any truth to Judge's Byrd's misconstruction of my attempted theft as in RT926:24-26? I attached my Exhibit #52 in its entirety to the Petition for Rehearing (which Judge

⁶ A deferred compensation and thrift plan

Byrd was holding in her hands while she was reprimanding me as above).

Why did Judge Byrd think that my innocent draft DRO proposal to Horizons was an attempt to invade her space and steal Suzie's retirement money with Horizons? I believe that the most reasonable explanation is that she failed to recognize my legal rights to draft the (Q)DROs per 29 U.S.C. §1056(d) and 26 U.S.C. §414(p). Otherwise, why did she react irrationally?

2.2.2 The Trial Court's failure to apply to my draft (Q)DROs the CERL⁷ 1937 (Los Angeles County is one of 20 counties in California subject to the provisions of the 1937 Act.), Government Codes §31450 et seq., §31532 (Subpoena of Member's Retirement Plan Information by Nonmember), and Civil Procedure Code §1985 et seq.:

Did I offend Judge Byrd by demonstrating my ability to get Suzie's Horizons account balance of \$252,729.9789 as of 08/13/2015 (P1 of Petitioner's Exhibit #52, reattached as P7 to the Petition for Review)? Yes. I doubt that Judge Byrd recognized my legal rights to subpoena Suzie's Horizons account information per the above authorities. The answer

⁷ County employees' retirement law

**Table 1: Tally of the legal errors that Judge Byrd made in rendering her Decision of
*"Husband's Misconduct"***

#of legal errors	Rules of law	Court's misconstruction	Why erroneous?	Covered on
1	29 U.S.C. §1056 (d)	RT926:24-26	Failure to apply this law to my draft (Q)DROs	P27
2	26 U.S.C. §414 (p)	RT926:24-26	Same as in #1 above	P27
3	CERL 1937, Government Code §31450 et seq.	RT926:24-26	Same as in #1 above	P29
4	Government Code §31532 (Subpoena of Member's Retirement Plan Information by Nonmember)	RT926:24-26	Failure to recognize nonmember's right to subpoena member's Horizons & LACERA account information	P29
5	Civil Procedure Code §1985 et seq.	RT926:24-26	Same as in #4 above	P29

6	Denial of herself being the Court	RT926:24-26	The Trial Judge was indeed the Court.	P32
7	Civil Procedure Code §4800(a)	DECISION P10-11	The Court's ruling was the exact opposite of this code favoring the trial date as the valuation date for community assets.	P36
8	Family Codes §§232, 233, 7700	DECISION P10-11	Erroneously broadening the ATROs ⁸ in FL-110 & erroneous ruling that the ATROs also restrained me from drafting (Q)DROs	P38
9	Civil Procedure Codes §§412.20, 416.60 - 416.90.	DECISION P10-11	Same as in #8 above.	P38

⁸ Automatic temporary restraining orders

may lie in her own admonishments on RT926:24-26 quoted on P25 of this Petition.

There were a couple of critical legal errors in the Court's question:

The first critical legal error:

Judge Byrd denied that she was the Court whom I was standing right in front of for the final approval of my draft (Q)DROs. Her assertion was obviously false as she was indeed the Judge, therefore, the Court.

The second critical legal error:

When was my first court appearance for my draft (Q)DROs on Suzie's Horizons and LACERA? Judge Byrd overlooked my legal rights to subpoena Suzie's Horizons and LACERA account information per Government Code §31532 and the other authorities listed in Table 1 above. My first court appearance was on 08/10/2015 (P16-19 of the attachments to my Petition for Rehearing) to have my subpoenas approved/filed by the Clerk before I sent them out to Horizons and LACERA. They clearly indicated that Clerk M. Rodriguez approved/filed my subpoenas to Horizons and LACERA on 08/10/2015.

I served Suzie those two subpoenas timely, and she quashed my subpoenas quickly on

08/19/2015 (Petitioner's Exhibits #72 and #73) so that I got the account information from Horizons only, but not from LACERA, likely due to LACERA's untimely response to my subpoena prior to their receipt of Suzie's quashing. Thus, her claim that she had no clue about my draft (Q)DROs prior to 11/24/2015 (RT936:23-24) was partly false because she knew very well that I was working on her Horizons and LACERA since 08/19/2015 or earlier. Suzie's half-truth of my service deficiency influenced Judge Byrd's punitive Decision enormously.

Judge Byrd was the legal expert. Should she have known well about Government Code §31532 and the other authorities listed above, or Forms SUBP-002 and SUBP-025. So, she should have understood that my obtaining Suzie's Horizons account information was not an attempt to steal her retirement funds as she characterized, but a legitimate exercise of my legal rights?

2.2.3 The Court was wrong regarding the date of division because she failed to apply Civil Procedure Code §4800(a):

The date of division was one of the most damaging accusations against me in "*Husband's Misconduct*", and it is one of the easiest to determine that Judge Byrd erred per Civil Procedure Code §4800(a).

As I discussed in Section 3.2.1 Date of Division on P65 of my Opening Brief, toward the end of 11/23/2015, I asked Judge Byrd for guidance regarding the date of division for the retirement benefits (RT693:26-RT694:7).

But my questions went unanswered. Judge Byrd declined to give me her preferred date, i.e., the separation date vs. the trial date. Consequently, I had to prepare two sets of draft (Q)DROs, one for the separation date, and the other for the trial date. Unfortunately, Judge Byrd scolded me the next morning, and punished me in her Decision as below:

“...but also, half of the separate property portion, including Wife’s separate property benefits accruing during the 6 ½ years since the parties separated.”

If Judge Byrd had answered my question on 11/23/2015, I would not have done the double work to prepare a second set of draft (Q)DROs using the trial date, venturing into her forbidden territory of *“Wife’s separate property benefits”*.

I discovered through research that Judge Byrd’s preference to use the separation date was NOT really the legal date to have the parties’ retirement benefits divided.

Please see *In re Marriage of Bergman*, 168 Cal. App. 3d 742 (1985) and *In re Marriage of Green*

213 Cal. App. 3d 14261 (1989). The Bergman and Green cases clearly stated that *Civil Procedure Code §4800, subdivision(a), directs the court to value community assets as near to the time of trial as practicable, except that the court may, on appropriate notice and a showing of good cause, value the property at a date after separation and before trial.*

Therefore, per Civil Procedure Code §4800(a) as quoted above, my use of the valuation date of Suzie's Horizons and LACERA as of the trial date was actually the preferred legal date over the separation date that Judge Byrd erroneously insisted to use.

It is worth noting that neither of us had filed a petition to move the division date of our retirement benefits from the trial date to the separation date. So, it was either a violation of Civil Procedure Code §4800(a) or an abuse of discretion for Judge Byrd to impose upon me her preference of using the separation date in this demonizing and punitive fashion.

What made my case unique was that it dragged on for 6½ years long between separation and trial due to Suzie's unreasonable positions. So, in adopting the trial date in my draft (Q)DROs for both her Horizons and LACERA, it seemed that I would have taken advantage of half of the accruals for both of her retirement plans during the 6½-year period.

But even if my draft (Q)DROs really made me appear like being self-serving, they were perfectly legal per Civil Procedure Code §4800(a), and they were light years away from being proof of my attempted theft as Judge Byrd mischaracterized in the trial and in her Decision.

2.2.4 One compelling reason to justify my use of the trial date for division of Suzie's Horizons even if Civil Procedure Code §4800(a) were non-existent:

Judge Byrd asserted that

"His attempt to obtain significant sums to which he was not entitled, without any notice to wife, was intentionally deceitful." (Appendix P58:6-9 = Decision P11:2-4).

The one compelling reason for me to also "attempt" to adopt the trial date for division, especially for the Horizons was Suzie's \$50,000 fraudulent loan which she borrowed against the Horizons (CT504) to put me in a \$25,000 disadvantage. As the evidence (P14-15 of the attachments to my Opening Brief) demonstrated, Suzie deposited the \$49,900 (\$50,000-\$100 fees) at Washington Mutual Bank on 02/12/2009, 3 months before separation, and she drained the money quickly, a typical pattern of how she disposed of the entire \$382,408. She withdrew \$7,500 on 02/23/2009,

\$10,000 on the same day again, \$10,000 on the next day, and a large withdrawal of \$22,400 on 02/27/2009. By 02/27/2009 or 15 days later, only \$200 remained. No reasonable person would withdraw and spend cash like that, squandering \$49,700 in 15 days on alleged travelling, paying loans, and buying household supplies or Chinese herbs/herbal medications without any documentation to support her stories.

Unfortunately, Judge Byrd excused her for the entire \$50,000 fraudulent loan, largely because Suzie was misjudged as the victim of my attempted theft.

There was indeed a significant sum, the huge difference of \$119,091 between the two values: \$252,730 (P7 of the attachments to the Petition for Review) minus \$133,639, what was actually divided as of 05/14/2009 (CT194). Was the Trial Court right in asserting that I was not entitled to the significant sums of $\$119,091 \times 50\% = \$59,546$? No. Not exactly! Suzie paid back the \$50,000 fraudulent loan to Horizons between separation and trial (RT946:27-RT947:5). So, I was the rightful owner of a significant sum of \$25,000 principal as of the date of that loan on 02/09/2009 (CT504) + 50% total accruals of the entire Horizons funds in 6 years and 9 months = \$x. Would the \$x come close to \$59,546? Yes. Definitely! $\$x = \$59,546$ if Suzie stopped contributing to her Horizons after separation on 05/15/2009,

which was possible; and \$x would be close to \$59,546 if Suzie's post-separation contributions to Horizons had been small.

So, I was not attempting to steal Suzie's Horizons money after all, and I was just *attempting* to get back my fair shares of our community assets at Horizons.

Of course, in claiming half of the \$252,730 or \$126,365 of her Horizons, I need to reduce Suzie's total misappropriations by \$50,000: \$382,408 (in Table 1 on P8-9 of my Opening Brief) - \$50,000 = \$332,408.

2.2.5 Is it true that

"It was also in violation of the Standard Family Law Restraining Orders set forth in the summons FL-110." (Appendix P58:9-11 = Decision P11:4-5)?

No. Not really. If the Standard Family Law Restraining Orders overrule Civil Procedure Code §4800(a), no couple who filed for dissolution could have their community property divided. Therefore, Judge Byrd was erroneously broadening the restraints not intended in the Standard Family Law Restraining Orders set forth in the summons FL-110, or Family Codes §§232, 233, 7700 and Civil Procedure Codes §§412.20, 416.60-416.90.

In conclusion, NONE of the rationales that Judge Byrd used in issuing her Decision of "*Husband's Misconduct*" could hold, and the Court based the entire Section of III. C. 6 on false premises.

I hope that I have convinced you by now that this incident is indeed a "sentinel event" in judicial malpractice.

Question #3: Did Suzie's unsubstantiated DV claims warrant judge Byrd's punitive Decision against me in property division?

The Court's prejudicial handling of Suzie's alleged DV charges against me, in violation of my fundamental 6th Amendment rights of the US Constitution that I was presumed innocent until proven guilty.

When Suzie claimed DV without any witness or proof, and I denied it, it should have been a toss-up as no third party would know for sure about what exactly happened. So, her DV claims should have carried no weight on how our community property should have been divided.

As I reasoned during the oral argument on 09/26/2017, there were circumstantial evidences favoring me, such as my police report (CT383 discussed in Section 3.1 on P59-64 of my Opening

Brief) in which Officer Magana described Suzie's story as being "*inconsistent*" and "*lack of evidence*".

Suzie's motive in making DV claims was to divert the Court's attention away from her fraudulent fund misappropriations totaling \$382,408 in about 2½ years prior to separation.

She sat on her alleged **verbal death threat** for 13 days long as the timeline demonstrated in Table 5 on P62-63 of my Opening Brief. The amount of animosity that Suzie had unleashed against me throughout the divorce proceedings did not support the presumption of her making a difficult decision by debating herself if to implicate me for a DV crime from 02/18/2012 to 03/02/2012 or for 13 days long.

The Court's two refusals to accept my police report (CT383) as evidenced in RT907:20-908:12 and RT2160:20-2161:24 were **prejudicial** as Judge Byrd overlooked a crucial fact that Suzie's DV claims were also built on the same police reports or *hearsay* as she put it. Contrary to the Court's ruling in the Decision, I do not believe that the restraining orders which Suzie managed to obtain during the divorce proceedings made her DV claims any stronger.

The Court's **prejudice** in handling the alleged DV issue was obvious as evidenced by the Court's mentioning **domestic violence** at least NINE times in the Decision.

By reading the Decision, the image of a violent man emerges, and DV apparently loomed large in the punitive Decision.

It is fair to say that in her Decision, the Court treated me as if I were a convicted felon of DV, **in violation of my fundamental 6th Amendment rights of the US Constitution that I was presumed innocent until proven guilty**, not the other way around. Again, the “sentinel event” was likely to blame: The Court may have arrived at the erroneous conclusion that the man who dared to have “*misconducted*” in the Courtroom was more likely than not to have *misconducted* himself by committing DV against his wife in his private home.

4. **The Court deprived me of my fair marital property rights with a deeply unjust process, in violation of my 5th Amendment rights to the US Constitution:**

All the bank accounts in Table 1 on P8-9 of my Opening Brief were in Suzie’s name exclusively. But the Trial Judge was confused and thought that some of those bank accounts were joint accounts with my name on them, too. So, she erroneously put the burden of proof on me regarding where the money went. Judge Byrd deprived me of:

50% of \$382,408 = **\$191,204**

The huge penalty of **\$247,999** for my alleged violation of Family Code §1101(h) (Appendices P64:17, P66:25-29, P72 = Decision P14:3 of first paragraph, P14:11-13 of last paragraph, and P17 of the Table of Equalization Payment).

Judge Byrd compromised my property rights in many other areas such as Suzie's Family Code §2640 claims of \$86,800 which compromised me by **\$43,400** covered in Section 2.3 on P21-30 of my Opening Brief; the Watts charge issue which potentially compromised me by over **\$68,337** covered in Section 4.3.1 on P77-78 of my Opening Brief; the home value issue which short-changed me by over **\$44,949** covered in Section 4.3.2 on P78-79 of my Opening Brief; and some other rulings that deprived me of my fair property rights by at least **\$18,197**.

So, the Court compromised me by at least:

$$\underline{\$191,204 + \$247,999 + \$43,400 + \$68,337 + \$44,949 + \$18,197 = \$614,086}$$

This figure is gigantic for a lower middle class family with a modest amount of total assets to begin with!

5. Was any of my evidence or exhibits, including Petitioner's Exhibit #39 titled "Suzie's actual cash strength as of 2006" waived per the Appeals Court?

I would like to address one important issue of waiver of evidence covered by the Appeals Court in Opinion P16:15-22 = Appendices P19:30-P20:7.

The Appeals Court likely overlooked the fact that I filed a timely Motion for a New Trial (Motion) on January 14, 2015. Therefore, they may have overlooked my legal rights per CCP 657 which gave me the last-minute chance to legally add more exhibits to the records or to the attention of the Trial Judge.

The Motion appeared to be a great equalizer that put me, the more reserved and less aggressive party during the trial, on similar footing with Suzie.

So, the Appellate Justices were erroneous in characterizing that I was discussing my own exhibits in my Opening Brief. For example, I brought my Exhibit #39 titled "Suzie Young's actual cash strength as of 2006" to Judge Byrd's attention at least twice: once during the trial, and another time in the Motion.

CONCLUSION:

I thought naively that there would be no winner or loser at the beginning of my divorce, and I would divorce Suzie with a handshake. But she did not intend to divorce me that way. She did not like the idea of fair division of our community property, and she wanted to take it all. She made numerous DV allegations as discussed in Question #3. She had

the Police arrested me on 03/02/2012 for my alleged verbal death threat against her in her culmination of making a DV case against me. She took her bifurcation issue of fraud all the way to the California Supreme Court as discussed on Pi, which was her initial diversion tactic to cover up her fraudulent financial dealings in disposing \$382,408 in about 2½ years before separation. Unfortunately, the Trial Court fell into her traps, allowing her to take it all. So, Suzie's testimonies and the Judicial Officers' egregious Judgments caused my case to land in the Highest Court of the Land. So, here I am. This is something that was beyond my wildest imagination at the beginning of my divorce.

I hope that I have demonstrated to your honor convincingly that the Appeals Court's Opinion was critically flawed by arriving at the erroneous finding that *Judge Byrd acknowledged my child support obligations for my son Alan* while Judge Byrd clearly failed to do so in her Decision. Therefore, the Appeals Court exceeded the scope of Appellate Reviews and their Opinion was the outcome of a prohibited retrial.

I hope that I have also convinced you that the Appeals Court's omission of my draft (Q)DROs issue and Judge Byrd's subsequent Decision on "*Husband's Misconduct*", was not the proper exercise of their discretion, but more likely intentional dodging of an important appealable issue, which was

an egregious error of omission of their own, and which alone should have invalidated their Opinion to affirm the FAMILY Court's bad Decision by the California Supreme Court, but they denied my Petition for Review without an Opinion.

I believe that my citation of the case law **Cresto v. Cresto, Supreme Court of Kansas, 358 P.3d 831 (2015)**, clearly demonstrated that there is a Circuit Split here between the California Supreme Court and the Kansas Supreme Court because they handled the similar cases of Appellate Justices exceeding the standards of review vastly differently.

I believe that all my four Questions presented are meritorious because compared to the small size of my case, the errors of the Judicial Officers were relatively numerous, egregious, and grave. These errors are likely rare and the worst of their kinds in the entire nation. So, even though error-correction alone is rare for this Court to intervene, I hope that my case carries enough total gravity to meet your criteria for a Writ.

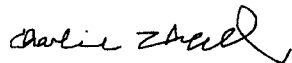
I know that this Court is busy caring for the controversies stirred up by the VIPs such as President Trump. I wish that you would find time to mind the abortion of justice for the average Americans so that America will not continue her slide down this path to a 3rd world country where fairness and justice are beyond reach for many.

What happened to me and my case to date has shaken up my confidence that my honesty and integrity would eventually prevail. I hope that as the very last guardians of fairness and justice of this Land, you would intervene to uphold the sacredness and dignity of the law, esp. the appellate rules so that no Appellate Justices across the nation would act as if they were high above the law or the truth, and they would think twice when tempted to produce the same “muddy” work...

I sincerely hope that the Honorable US Supreme Court Justices and their Honorable Associates would give my Petition for Writ of Certiorari your kind consideration and accept it as meritorious as you deem appropriate and warranted.

Respectfully submitted,

Dated this 1st day of April 2018

A handwritten signature in cursive script, appearing to read "Charlie Zhao".

Charlie Zhao, Petitioner and Appellant in pro per

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

Filed on NOV 3, 2017

CHARLIE ZHAO,

Plaintiff and Appellant,

V.

SUZIE YOUNG,

Defendant and Respondent.

JOSEPH A. LANE

Deputy Clerk

B271103

(Los Angeles
County Super. Ct. No.
GD044309)

ORDER

On October 25, 2017, appellant filed a **petition for rehearing** and respondent filed a petition for reconsideration letter, which we construe as a petition for rehearing, in the above-referenced matter. We have read and considered the petitions, and deny them.

s/s RUBIN, ACT P.J.

s/s FLIER, J.

s/s GRIMES, J.

Filed 10/10/17 Zhao v. Young CA2/8

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CHARLIE ZHAO,

Plaintiff and Appellant,

v.

SUZIE YOUNG,

Defendant and Respondent.

B271103

**(Los Angeles County
Super. Ct. No. GD044309)**

APPEAL from a judgment of the Superior Court of Los Angeles County. Christine Byrd, Judge. Affirmed in part, reversed in part.

Charlie Zhao in pro per for Plaintiff and Appellant.

Suzie Young in pro per for Defendant and Respondent.

INTRODUCTION

Charlie Zhao (husband) appeals from a judgment of dissolution of marriage, challenging the trial court's division of the marital estate and the reimbursement it ordered him to pay respondent Suzie Young (wife). Husband largely takes issue with the court's finding that husband diverted \$247,999 away from the community without wife's written authorization and in violation of his fiduciary duties described in Family Code section 1101.¹ We reverse the court's finding that husband diverted \$43,200 to his sister Cindy between 2005 and 2009, and remand for the trial court to reassess this amount in light of other findings the court made. We affirm on all other grounds because the court's other findings were supported by substantial evidence.

FACTS AND PROCEDURAL BACKGROUND

¹ All subsequent statutory references are to the Family Code.

Our recitation of the facts is based on the trial court's factual findings following a trial on the merits. This is the second time this case has been before this court; the first involved wife's appeal from the trial court's judgment that the marriage was neither void nor voidable (case No. B253721). The present appeal solely deals with the division of marital assets. Accordingly, the facts focus on the accumulation of assets and liabilities, as well as spousal authorization of community property expenditures.

1. *Early Marriage*

Husband was previously married to another woman, who lived in China and with whom he has one son (Alan); they divorced in 1990. Husband and his present wife, Suzie Young, married in 1991. The marriage lasted 18 years; they separated on May 15, 2009, the date husband filed the petition for dissolution. Early in the marriage, husband and wife had one child, who died when he was only 13 months old due to significant health problems. During the child's short life, husband stopped working to care for him, while wife worked to support the family. After the child's death, husband did not return to work due to depression. Years later, husband enrolled in school to become a nutritionist. In 2001, husband began working as a dietitian for Kaiser.

2. *Growing Financial Obligations and Disagreements*

In 1998, husband and wife purchased a small house in Alhambra. They rented the house to tenants until 2004, when they paid off the mortgage.

Husband, wife, and wife's mother moved into the house in 2004. Husband's parents, who emigrated from China around this time, moved into the home in 2005.

In 2007, without wife's consent, husband purchased a \$29,000 new car for himself by borrowing \$22,000 from a bank and the balance from his parents. He also opened a new credit card, from which he made the monthly loan payments to the bank. Husband hoped that wife would pay the credit card bills from their household account. Shortly thereafter, in April 2007, Kaiser terminated husband from his employment; husband remained unemployed for 18 months. Payment of expenses, especially the new car payments, became a significant issue between the parties.

Also in 2007, Alan, husband's then-17-year-old son from his first marriage, emigrated to the United States and came to live with the couple and their parents. The two-bedroom Alhambra house was then home to six people. Three times in 2007 and twice in 2008, wife called the police to report domestic violence by husband; on each occasion she refused to prosecute.

In October 2008, Kaiser reinstated husband as an employee and he received over \$100,000 in back pay. When the parties separated six months later, husband only possessed \$22,000 remaining from that payment. During the marriage, wife accumulated a retirement account through her employer. Husband appears to have had no retirement savings at the time of separation.

3. *Husband's Unauthorized Expenditures of Community Assets*

Throughout the 18-year marriage, husband gave "lavishly" to his extended family. He transferred thousands of dollars to relatives in China without wife's consent. After filing this action, husband transferred over \$46,000 more of community funds to China in direct violation of restraining orders set out in the family law summons. Husband used all of his community income as well as some of wife's community income to support his relatives, giving monthly to his parents, son Alan, and husband's sister Cindy. Husband considered Cindy to be his adoptive daughter even though there was no formal adoption by husband or wife; husband's parents had actually adopted Cindy. In 2009, husband received \$26,485 from his sister in China. This was the sole transaction in the record where money flowed from China back to husband.

4. *Initiation of Dissolution Proceedings and Husband's Continued Occupation of the Alhambra House*

On May 15, 2009, husband filed for dissolution. He and his entire family continued to reside in the Alhambra house with wife and her mother. Wife again reported domestic violence to police but refused to prosecute.

In November 2009, husband's then-seven-year-old adopted sister Cindy emigrated from China. At this time, husband's parents, son, adopted sister, and husband moved out of the Alhambra house.

However, four of them retained keys to the house, occasionally and unexpectedly returned to the house, and kept their belongings in one of the bedrooms, which husband padlocked. Husband also kept a large quantity of personal belongings in the padlocked garage and storage shed on the property.

In 2011, wife obtained an order granting her exclusive possession of the Alhambra house. In March 2012, the court issued a domestic violence restraining order against husband for three years, and thereafter renewed it for five years. The restraining orders granted wife exclusive use of the Alhambra house.

5. *Trial on Division of Marital Assets*

Trial on the division of marital assets commenced on November 9, 2015 and concluded on December 15, 2015. Both parties were self-represented throughout trial.² Husband argued that wife had diverted \$382,408 in funds away from the community, without his authorization. Wife argued that husband had wrongfully transferred \$247,999 away from the community to extended family members, without her consent. Husband and wife testified at trial. Husband's mother attempted to testify, but due to differences in dialect, multiple Mandarin interpreters tried and failed to translate for her. The parties instead stipulated to her testimony.

On December 30, 2015, the court issued its tentative decision explaining its factual findings,

² The parties appear to have had the assistance of counsel during discovery.

which we have summarized in part above. The tentative decision divided the marital assets, characterized community and separate property, and made certain orders for reimbursement. Husband moved for a new trial, which was denied. In March 2016, the trial court entered judgment dividing the assets.

6. *Trial Court's Findings and Division of Assets*

The trial court found by clear and convincing evidence that husband diverted significant sums away from the community, to his parents, his sister Cindy, and to unknown people in China. He diverted the community money without wife's knowledge or written consent, and in violation of his fiduciary duties and the Standard Family Law Restraining Orders set forth in the summons he received. The court based its findings on wife's collection and analysis of bank records. The court determined that husband was trying to cover up his diversion of funds by blaming the missing money on wife. The court found that husband's accusations were not supported by evidence. The court concluded that husband acted with fraud, oppression, and malice. Pursuant to section 1101, subdivision (h), the court awarded wife an amount equal to 100 percent of the funds husband wrongfully transferred, which totaled \$247,999.³

³ Under section 1101, subdivision (a), "A spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse's present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant

The court awarded wife the Alhambra house, which it valued at \$380,000, and all of the household furniture, furnishings, appliances, and the piano. The court awarded wife bank accounts containing \$1,259.68, \$1,014.00, \$34.72, \$29.99, and \$5,676.00, as well as the couple's two burial plots. The court found that the jewelry in wife's possession were gifts from husband and her separate property. The court awarded wife her deferred compensation account. The court also found that wife was not required to repay the community for a loan taken from her deferred compensation account because it was spent on community expenses.

The court awarded husband bank accounts containing \$22,352.00 and \$408.00, as well as three parcels of land in Kern County that were purchased during the marriage. To equalize the division of property, the court ordered husband to pay wife \$1,599 within 30 days after entry of judgment. The court found husband's tax liability to be his separate property. The court denied husband *Watts* charges relating to wife's postseparation occupancy of the Alhambra house.⁴

spouse's undivided one-half interest in the community estate." Remedies for violation of this fiduciary duty include "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." (§ 1101, subd. (h).)

⁴ *In re Marriage of Watts* (1985) 171 Cal.App.3d 366, 374, held that the trial court, where appropriate, may charge a spouse who engages in exclusive use of community property after separation for one-half of that community asset's use.

The court also awarded husband and wife their respective retirement accounts and life insurance policies. The court determined that neither of the couple's two vehicles had worth as the parties did not introduce evidence of worth, and awarded wife the 2000 Honda Accord and husband the 2007 Honda Pilot.

DISCUSSION

1. *Husband's Request to Strike Wife's Brief is Denied*

Husband asks this court to dismiss or strike the respondent's brief because it was "noncompliant with relevant Court Rules." We have considered only those matters in the wife's brief that are proper arguments supported by the record. We exercise our discretion not to strike the respondent's brief.

2. *Standard of Review*

Husband appeals the trial court's findings asserting that they were not supported by the evidence. "In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings." (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981 (*Thompson*).) "A single witness's testimony may constitute substantial evidence to support a finding. [Citation.]

It is not our rôle as a reviewing court to reweigh the evidence or to assess witness credibility.” (*Ibid.*) “A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

3. *We Affirm in Part, and Reverse and Remand in Part the Court’s Findings on the Amount of Community Property Husband Diverted*

Husband argues that the court erroneously found that he diverted \$247,999 from the community without wife’s authorization, in violation of section 1101, subdivision (h). The court found the \$247,999 total by adding two unauthorized types of transfers—\$124,317 in money sent to relatives in China and \$97,200 in gifts made to relatives in the United States—and one transaction that returned community money from China (\$26,485). We address the amounts individually below.

a. *The Court’s Finding that Husband Sent \$124,317 to Relatives in China Was Supported by Substantial Evidence*

The court based its finding that husband transferred \$124,317 to relatives in China on bank records and wife’s testimony. The court explained: “While Wife wrote checks that were for typical household expenses, Husband wrote checks to himself, withdrawing the money from the joint account and depositing it directly into a separate account under his name alone. . . . From there, he

wired the funds to China. . . . From the opening of the joint account in 1999 until it was closed in December 2007, Husband wired over \$66,000 to China.” The court identified the specific account numbers, bank name, and wife’s exhibit 21 and 39 to support its conclusion.

The trial court stated that “when Husband was terminated from his job at Kaiser in April 2007, he opened up a more complex system of accounts. On April 9, 2007, only two days after being terminated from his job, Husband opened another Eastern International bank account, this one under his name alone. . . . In October and November, he opened up two more accounts under his name. . . . From these three new accounts, Husband sent an additional \$6,570 to China before separation and sent \$46,740 more after separation.” The court concluded that, “Altogether, Husband transferred \$124,317 without Wife’s written consent. In view of Husband’s limited income and the fact that he was supporting his relatives here in the United States rather than the other way around, the Court finds that the only source of these funds was the community.” (Footnote omitted.) Wife’s exhibits 21 and 39, and her testimony that she did not authorize the transfers of money to family in China provide substantial evidence in support of the court’s findings.

Husband argues that \$77,000 of the money sent to China was for child support of his son Alan and his “adopted daughter” Cindy, and should not be included in the court’s calculation of the amount he diverted from the community. The trial court

acknowledged husband's child support obligations to Alan, and concluded that husband's transfers to support Alan did not violate section 1100, subdivision (b). Nonetheless, the trial court expressly found that Cindy was husband's sister—she had been adopted by husband's parents. Although husband testified that he intended to adopt Cindy, husband admits in his appellate brief that he did not adopt her prior to his separation from wife. Husband also testified that Cindy was actually his sister, and the court expressly found that Cindy was not a child of the marriage. As she is his sister, husband did not have child support obligations to Cindy during the marriage.

Although husband argues that the money for Alan's child support should not be included in the section 1101 calculation, he fails to identify which money transfers were attributable to child support payments for Alan and wrongfully included in the court's calculation. Husband argues generally that he wired the \$77,000 over an 18-year, 2-month period for both Alan and Cindy. He fails to reference any part of the record parsing out the wire transfers for Alan's support. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408 ["To demonstrate error, [the] appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error."].) It appears the court lacked such information as husband's testimony about child support lumped Alan and Cindy together. His arguments below

likewise failed to identify child support payments made specifically for Alan.

At trial, wife produced records of unauthorized wire transfers of community funds and husband admitted he made such transfers. Husband had the burden to rebut such evidence and show that particular transfers were attributable to legitimate child support payments. (See e.g., *In re Marriage of Margulis* (2011) 198 Cal.App.4th 1252, 1267.) Husband failed to do so.

Husband also argues that the court's findings were erroneous because "the [c]ourt accepted [wife]'s misrepresentations that [he] transferred the money without her agreement, and [he] invested in China with this money." As husband acknowledges, this is an issue of credibility. The trial court found wife more credible than husband when evaluating testimony about husband's wire transfers to China. We do not reevaluate the trial court's credibility determinations or reweigh the evidence on appeal. (*Thompson, supra*, 6 Cal.App.5th at p. 981.) The trial court's decision was supported by substantial evidence.

b. Substantial Evidence Supports the Court's Conclusion that \$26,485 Sent to Husband from China was Community Property

The court found that "Husband also received funds back from China in the amount of \$26,485 and did not share them with Wife. Wife claimed that these funds were a return on funds he had sent to China for investment purposes. Husband claimed

that it was repayment of a \$30,000 loan he made on behalf of his niece in China. Either way, the Court finds that the funds were community in character.” Husband argues that the court erred in characterizing the \$30,000 as community property.

Husband argues the funds were separate property based on his testimony that in 2009, he had taken a loan out from credit cards to send the \$30,000 to his niece in China. Husband asserted that he received the \$26,485 back from the niece later that year. Husband acknowledges that in making its decision, the court did not credit husband’s testimony. Again, husband disputes the court’s credibility findings and weighing of the evidence. We do not reweigh the evidence or reevaluate the credibility of witnesses on appeal. (*Thompson, supra*, 6 Cal.App.5th at p. 981.) As the court’s decision is supported by wife’s testimony on this issue, we affirm.

c. The Court’s Findings Are Inconsistent on the \$97,200 Gifted to Relatives in the United States

The court concluded that husband’s “gifts to relatives in the United States were \$97,200.” The court’s conclusion was supported by its finding that “Husband was giving gifts of community funds to his parents and his sister on a monthly basis without Wife’s written consent. The amount was \$1,000/month for his parents and \$800/month for his sister Cindy from 2005 to separation in 2009, a total of about 4 1/2 years, or \$97,200.” The total breaks down to \$54,000 to his parents and \$43,200 to Cindy.

Husband asserts that the court did not properly calculate the amount given to his parents. Yet, husband admitted in a discovery response, which was entered into evidence at trial, that he gave each parent \$500 per month in financial support. The court's calculation of \$1,000 per month total given to husband's parents is further supported by husband's admission at trial that his parents' only income during this time period was derived from collecting recyclables. Substantial evidence supports the court's finding that husband gifted \$54,000 to his parents between 2005 and 2009 without wife's authorization.

Husband also contends that the trial court miscalculated the amount gifted to Cindy because she did not arrive in the United States until 2009. Thus, no evidence supported the finding that he paid money to Cindy while she was in this country. He asserts that the judgment should be reduced by \$43,200 to correct the trial court's error. The trial court expressly found that Cindy emigrated to the United States in November 2009. Thus, the court's inclusion of the \$800 per month for Cindy from 2005 to 2009 appears to be a miscalculation. Although it is clear husband made payments to Cindy (or to an adult family member on Cindy's behalf), it appears that these payments were made to people in China, where she lived between 2005 and November 2009. Payments to Cindy appear to be part of the \$124,317 sent to China. On this state of the record, the trial court may have counted gifts to Cindy twice. We conclude the trial court failed in the first instance to

reconcile what might be two inconsistent facts, and therefore remand for the trial court to reassess whether this \$43,200 should be included in the court's calculations of husband's gifts to relatives within the United States.

4. *The Trial Court's Finding that Wife Did Not Commit Misconduct Was Supported by Substantial Evidence*

Husband argues that the court erred in accepting wife's testimony regarding how she spent \$382,408 on community expenses during the marriage. He asserts that wife breached her fiduciary duty to him in violation of section 1101 by transferring the funds out of the community without authorization.

The trial court found: "the evidence is insufficient to establish any misconduct on [wife's] part. For example, Husband questions Wife's withdrawal of about \$17,000 from savings in the Water & Power Community Credit Union . . . during the period late November 2006 to February 2007. Wife testified that the money was needed for household expenses. Husband testified that he was paying all household expenses with his Kaiser paycheck at that time, pointing to the parties' joint account, and suggesting that Wife must have withdrawn the savings for some other purpose. What Husband ignores is that he sent over \$17,000 to China that year, which represented over half his paycheck. Wife's testimony that she needed to withdraw \$17,000 from savings that year to cover the household expenses is very credible."

The court further explained, “Husband also claims that Wife diverted \$28,000 when she withdrew the funds and closed a Citibank CD account the next year, in June 2007. . . . The only evidence that he has is that the funds were withdrawn and the account was closed. Husband asks the Court to infer that the funds were all used for non-community purposes. Again, Husband ignores the family circumstances in 2007, a year in which Husband lost his job yet purchased a new car, Husband’s son came to live with the parties, and of the [six] people living in the household, Wife was the only [person] earning an income. Under these circumstances, Wife’s testimony that the funds were needed for expenses is very credible. [¶] Overall, on Husband’s claims that Wife took community funds for non-community purposes, Wife testified with specificity as to each questioned transaction, her use of the funds, and the community financial position. The Court finds Wife’s testimony to be credible and consistent with the bank records.”

As explained by the trial court, substantial evidence in the form of wife’s testimony supported the finding that wife did not engage in misconduct with community assets. To the extent that husband disputes the truth of the testimony and credibility of wife, we reiterate that this court will not address such issues on appeal.

Importantly, husband failed to introduce evidence that wife transferred such funds out of the community for non-community purposes. Although husband created a chart called “Suzie Young’s actual

cash strength as of 2006,” which purported to document wife’s balances in different bank accounts, the document was never admitted to evidence. The document also failed to show that the funds were used for non-community expenditures. Husband in fact had no direct evidence the funds were not used for community expenses. As the trial court pointed out, husband’s argument was that if the funds were not in the accounts, it should be assumed they were not used for the community. As trier of fact, the trial court evaluated the evidence before it and found otherwise.

5. *Husband’s Remaining Substantial Evidence Challenges Are Without Merit*

Husband asserts that the court erred in valuing the Alhambra house at \$380,000, in denying his request to charge wife for rental of the Alhambra house after he and his family moved out of the residence (*Watts* charges), and in finding that a bank account containing \$22,793.41 was not his separate property. As to each of these issues, husband recognizes that the trial court found wife’s testimony credible and made factual findings accordingly. Husband argues that the court should not have credited wife’s testimony and should have believed his rendition of the facts. Yet, based on our independent review of the record, we conclude that the court’s factual findings were supported by substantial evidence provided by wife.

Moreover, husband’s arguments (like much of his brief) are substantial evidence challenges without the requisite proper exposition of all the evidence

received by the trial court, and are thus waived. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 [waiver of substantial evidence argument unless brief sets forth “all the material evidence on the point and not merely” the appellant’s “own evidence”]; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

6. *The Court Appropriately Exercised Its Broad Discretion in Allocating the Household Furnishings and Piano*

Lastly, husband disputes the court’s division of the household furnishings and the piano. He asserts “I want either the piano or the other furnishings, not neither.”

It is well established that “the court has broad discretion to determine the manner in which community property is divided and the responsibility to fix the value of assets and liabilities in order to accomplish an equal division.” (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 631.) Husband provides us no legal reasoning or factual analysis that shows how the court abused its discretion in awarding the furnishings and piano to wife.

DISPOSITION

We reverse on the limited issue of the trial court’s calculation of husband’s unauthorized transfers to Cindy between 2005 and 2009 as described in Part 3(c) of this opinion. We remand for the trial court to reassess this amount in light of its other findings and make any adjustments of the division of assets if needed. We express no opinion on whether any adjustments must in fact be made or

their amount. We affirm in all other respects. Wife
Suzie Young is awarded costs on appeal.

RUBIN, Acting P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.

**Notice of Entry of Judgment
SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF LOS
ANGELES**

FILED March 09 2016

Sherri R. Carter, Executive Officer/Clerk

/s/ Carl Bushnell, Deputy

In re the Marriage of:

Charlie Zhao,

Petitioner;

and

Suzie Young,

Respondent.

Case Number: GD044309

Dissolution

Contested: Date: November 9, 2015 Dept. 65

Petitioner present in court

Respondent present in court

The court acquired jurisdiction on June 1, 2009.

The respondent appeared.

Judgment of dissolution is entered. Marital status is terminated and the parties are restored to the status of single persons on March 09 2016.

Respondent's former name is restored to: Suzie Young.

See attachment to judgment for spousal support, property division, and attorney fees and costs.

ATTACHMENT TO JUDGMENT

Real Property (909 S. Electric Lane Alhambra, California 91803): This section shall apply to real property located at 909 S. Electric Lane Alhambra, California 91803 (hereinafter referred to as "the family residence"), bearing A.P.N. 5350-027-004, legally described as follows:

The Northerly 44 feet of the Southerly 76 feet of Lot 2, of Block 12 of Ramona, in the City of Alhambra, County of Los Angeles, California as per map recorded in Book 12, Page 53 of Miscellaneous Records, in the Office of the County Recorder of said County.

The court finds the fair market value to be \$380,000.00. The court finds that Suzie Young shall receive a Family Code section 2640 reimbursement in the amount of \$86,800.00. The family residence is awarded to Suzie Young, subject to equalization as set forth hereinbelow in the section entitled "Equalization Payment".

Watts Charges: The request by Charlie Yingzhou Zhao for Watts charges relating to post-separation use by Suzie Young of the family residence is denied.

Reimbursement Claims for Rental Value: The claims by both parties for reimbursement relating to the rental value based on third-party occupancy of the family residence are denied.

Household Furniture, Furnishings and Appliances:

Suzie Young is awarded all household furniture, furnishings and appliances in the family residence, including, but not limited to: piano, sofa, and plasma television. The Court finds that the piano is worth \$2,000 and that the remaining furnishings do not have any value.

Eastern International Bank (account #01-00156310):

The Court orders that the account (with a balance of \$22,751.15 as of the date of separation) be divided equally between the parties by awarding it to Charlie Yingzhou Zhao, subject to equalization as set forth hereinbelow in the section entitled "Equalization Payment".

Eastern International Bank (account #01-80119009):

The Court orders that the account (with a balance of \$22,352.00 as of the date of separation) be divided equally between the parties by awarding it to Charlie Yingzhou Zhao, subject to equalization as set forth hereinbelow in the section entitled "Equalization Payment".

Eastern International Bank (account #01-00151634):

The account was closed in 2006. There is nothing to divide.

Eastern International Bank (account #02-80034618):

The account was close in 2007. There is nothing to divide.

Capital One (account #18732856): The Court orders that the account (with a balance of \$408.00 as of the date of separation) be divided equally between the parties by awarding it to Charlie Yingzhou Zhao, subject to equalization as set forth hereinbelow in the section 20 entitled "Equalization Payment".

Cathay Bank (account #1662-635); Wells Fargo (account #xx0253): The monies previously held in Cathay Bank (account #1662-635) were transferred to Wells Fargo (account #xx0253). The Court orders that the account (with a balance of \$1,259.68 as of the date of separation) be divided equally between the parties by awarding it to Suzie Young, subject to equalization as set forth hereinbelow in the section entitled "Equalization Payment".

Three (3) accounts at 1st Bank and Trust: The Court finds that all three accounts were closed prior to separation. There is nothing to divide.

LA Financial Credit Union (account #1001708280): The Court orders that the account (with a balance of approximately \$1,014.00 as of the date of separation) be divided equally between the parties by awarding the account to Suzie Young, subject to equalization as set forth hereinbelow in the section entitled "Equalization Payment".

LA Financial Credit Union (account #35312652): The court finds that the account had a zero balance as of the date of separation. There is nothing to divide.

Fiscal Credit Union (Member No. 2647360): The Court orders that the account (with a balance of \$34.72 as of the date of separation) be divided equally between the parties by awarding the account to Suzie Young, subject to equalization as set forth hereinbelow in the section entitled "Equalization Payment".

Water & Power Community Credit Union (account #10025921): The Court orders that the account (with a balance of \$29.99 as of the date of separation) be divided equally **between the parties by awarding the account** to Suzie Young, subject to equalization as set forth hereinbelow in the section entitled "Equalization Payment".

Washington Mutual (account #494-240993-2): The bank records show that on February 12, 2009, just before separation, Suzie Young took a loan of \$50,000 from her deferred compensation account (Horizons) and received a check for \$49,900, representing the loan amount less \$100 in fees. She deposited the check into this Washington Mutual account. Some of the funds were used by the parties for a vacation. The remainder of the funds were spent on community expenses and to repay loans. Suzie Young has since repaid the loan to the Horizons account with her post-separation income. Based on the evidence, the Court finds that the loans that Suzie Young repaid were community debts and, therefore, that the amount borrowed from the Horizons

retirement account was all spent on community purposes. The Court finds that Suzie Young is not obligated to reimburse the community for the \$50,000 loan.

East-West Bank (account #xx3464 and #xx0347): The court finds that these accounts were closed in 2008. There is nothing to divide.

Citibank 5-year CD (account #xx3474 and #xx4032): With respect to the accounts at Citibank, the court finds that they were closed in June 2007. There is nothing to divide.

World Savings (account #xx4863, #xx9689, and #xx8209): The court finds that the accounts had a value of \$0 as of the date of separation. There is nothing to divide.

Charlie Yingzhou Zhao's Kaiser Retirement: The retirement funded by Kaiser (referred to as account #093150, called "union") is awarded to Charlie Yingzhou Zhao. The retirement account that was a voluntary contribution plan (referred to as account #090998, called "TSA") is awarded to Charlie Yingzhou Zhao.

Charlie Yingzhou Zhao's IRA Accounts: The following IRA accounts are all awarded to Charlie Yingzhou Zhao; Vanguard/Smith Barney account #61H-01451-19 (valued at \$8,063.81 at the time of separation); Vanguard/1st Bank CD #44997 0000 104 (valued at \$2,263 at the time of separation); and,

UCB account #6161 248 0211 (valued at \$2,424 at the time of separation).

L.A.C.E.R.A.: The "Los Angeles County Employees Retirement Association" (hereinafter referred to as "LACERA") is awarded to Suzie Young as her sole and separate property and any hold or restriction shall be removed effective upon entry of this judgment. If there is a legal hold or restriction against the member's account or benefits as a result of the non-member former spouse's claim from notice to the plan administrator or a "Joinder", said hold or restriction shall be removed effective upon entry of this judgment. If a Joinder has been filed against LACERA, the Joinder is hereby vacated.

Horizons: The "County of Los Angeles Deferred Compensation and Thrift Plan (Horizons)" (hereinafter referred to as "Horizons") is awarded to Suzie Young as her sole and separate property and any hold or restriction shall be removed effective upon entry of this judgment. If there is a legal hold or restriction against the member's account or benefits as a result of the non-member former spouse's claim from notice to the plan administrator or a "Joinder", said hold or restriction shall be removed effective upon entry of this judgment. If a Joinder has been filed against Horizons, the Joinder is hereby vacated.

Suzie Young's IRA Account: As to Citigroup account number # 61H-06041-15 said account was closed prior to the date of separation — there is nothing to

divide. As to Citigroup account #61H-10179-11 (with a balance of \$5,676 as of the date of separation), said account is awarded to Suzie Young.

2007 Honda Pilot (#5XXP077): The 2007 Honda Pilot (#5XXP077) is awarded to Charlie Yingzhou Zhao.

2000 Honda Accord LX (FD) (#4JUZ080) The 2000 Honda Accord (#4JUZ080) is awarded to Suzie Young.

Kern County Land The court awards all of the following three (3) parcels of land to Charlie Yingzhou Zhao (with a combined total fair market value of \$20,000.00):

PARCEL NUMBER 1 (A.P.N. 279-041-11-00-3):

LOT 264 OF TRACT 3186 IN THE CITY OF CALIFORNIA CITY, COUNTY OF KERN, STATE OF CALIFORNIA AS PER MAP RECORDED JULY 11, 1968 IN BOOK 16, PAGES 75 THROUGH 92, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. EXCEPTING THEREFROM ALL OIL, GAS, MINERALS, HYDROCARBON SUBSTANCES AND ALL WATER APPURTENANT HERETO, AS GRANTED AND RESERVED IN PREVIOUS DEEDS OF RECORD.

PARCEL NUMBER 2 (A.P.N. 262-141-09-00-5):

LOT 629 OF TRACK 3060 IN THE COUNTY OF KERN, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 15, PAGES 45 TO 54 INCLUSIVE OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY EXCEPTING THEREFROM ALL OIL, GAS, MINERALS, HYDROCARBON SUBSTANCES AND ALL WATER AND WATER RIGHTS APPURTENANT THERETO, AS GRANTED AND RESERVED IN PREVIOUS DEEDS OF RECORD.

PARCEL NUMBER 3 (A.P.N. 204-353-06-4):

Lot 143 of Tract 2122 as per map recorded in Book 10, Pages 100 to 100B inclusive of Maps in the Office of the County Recorder of the County of Kern, State of California. Subject To: All Covenants, Conditions, Restrictions, Minerals and Water Rights, Rights-of-Way, and Easements as granted and reserved in previous deeds of record.

Burial Plots: The court awards both of the following two (2) burial plots at Rose Hill cemetery to Suzie Young (with a combined fair market value of \$20,000.00):

PLOT NUMBER 1: Grave number 3, lot 1732, Garden of Gratitude at Rose Hills Memorial Park, 3888 South Workman Mill Rd., Whittier, California 90601.

PLOT NUMBER2: Grave number 4, lot 1732, Garden of Gratitude Rose Hills Memorial Park, 3888 South Workman Mill Rd., Whittier, California 90601.

2008 Tax Debts: Charlie Yingzhou Zhao and Suzie Young have been filing separate tax returns since 2007. Charlie Yingzhou Zhao claimed at trial that he owes taxes for 2008 in the amounts of \$5,097 federal and \$1,882 state. The Court finds that this tax liability is the separate liability of Charlie Yingzhou Zhao and awards it to him as his sole and separate debt.

Life Insurance: The parties have two life insurance policies, one with Great West and the other with MetLife. The Court awards each policy at \$0 value to the named insured(s) as that person's sole and separate property, and subject to any loans or encumbrances thereon.

Jewelry (Rings and Pearls): The Court finds that the jewelry in the possession of Suzie Young (rings and pearls) constitutes a gift from Charlie Yingzhou Zhao and awards the jewelry to Suzie Young as her sole and separate property.

Miscellaneous: Except as specified above, the Court awards to each party as his or her sole and separate property, the following: all personal property in that party's possession, all bank and credit union accounts in that party's name, and all loans and credit cards in that party's name.

Breach of Fiduciary Duty Claims: After consideration of all of the evidence, the Court finds by clear and convincing evidence that significant sums were, in fact, diverted away from the community but that it was Charlie Yingzhou Zhao who was engaged in the diversion, not Suzie Young. Charlie Yingzhou Zhao was diverting funds away from the community — to his parents, to his sister Cindy, and to unknown people in China - without Suzie Young's knowledge, without Suzie Young's written consent, in violation of his fiduciary duties, and in violation of the Standard Family Law Restraining Orders in the Summons (FL-110). And then, at trial, he tried to pin the diversion of funds on Suzie Young. Only through Suzie Young's painstaking collection and analysis of bank records was Charlie Yingzhou Zhao's conduct established. The Court finds that in diverting the community funds, and then in trying to cover up the diversion by blaming it on Suzie Young, Charlie Yingzhou Zhao acted with fraud, oppression and malice. The remedy for such conduct, as set forth in Family Code section 1101 (h) is the award to Suzie Young of an amount equal to 100% of the funds wrongfully transferred, a total of \$247 ,999.

Spousal Support: Having considered all the evidence presented, and having considered all of the factors under Family Code section 4320, the Court in the exercise of its discretion declines to award any spousal support to Charlie Yingzhou Zhao.

Costs on Appeal: The request by Charlie Yingzhou Zhao for costs relating to the prior appeal by Suzie

Young (bifurcated trial to nullify the marriage) is denied.

Attorneys Fees: The request by each party for attorneys fees is denied.

Equalization Payment: After taking into account the division of property set forth above and also granting to Suzie Young 100% of the value of the funds transferred by Charlie Yingzhou Zhao in violation of his legal obligations, the Court finds that Charlie Yingzhou Zhao owes Suzie Young the amount of \$1,599. The Court orders that Charlie Yingzhou Zhao pay \$1,599 to Suzie Young within 30 days after entry of judgment in this matter. If not paid in full, the unpaid balance shall accrue interest at the legal rate from that day forward.

IT IS SO ORDERED.

Dated: March 09 2016

Stamped

CHRISTINE BYRD

Christine Byrd

JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS
ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is: 1725 Echo Park Avenue - Los Angeles, California 90026.

On January 28, 2016, I served the foregoing documents described as: [proposed] Judgment (FL-180) [with 9-page "Attachment to Judgment", and this proof of service] on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Charlie Yingzhou Zhao
P.O. Box 3901
Alhambra, CA 91803

I deposited the sealed envelope with the United States Postal Service with the postage fully prepaid. The place of mailing was Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED on January 28, 2016, at Los Angeles, California.

/s/ Keith David Bershatsky
Proof of Service
FILED
Superior Court of California
County of Los Angeles
DEC 30 2016

FILED
Superior Court of California
County of Los Angeles
DEC 30 2016
Sherri R. Carter, Executive Officer/Clerk
By s/ Carl Bushnell, Deputy

SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF LOS
ANGELES

Case No. GD044309

In re the Marriage of:
CHARLIE ZHAO, Petitioner,
and
SUZIE YOUNG, Respondent.

TENTATIVE STATEMENT OF DECISION
AFTER TRIAL

Attached hereto is the Court's Tentative Statement of Decision after Trial. In this document, the Court announces its tentative decision on the submitted issues, explaining the factual and legal basis for its decision. This tentative decision will become the final statement of decision within the meaning of C.C.P. §632 unless within ten days either party files and serves a document that specifies controverted issues or makes proposals not covered in the

tentative decision, pursuant to Rule 3.1590(c) of the California Rules of Court.

DATED: DEC 30 2015

s/ Christine Byrd, JUDGE OF THE SUPERIOR COURT

Charlie Zhao v. Suzie Young Case No. GD 044309

Trial commenced on Nov. 9, 2015¹, and status was taken at that time, with the effective date of the dissolution of status to be the date of entry of judgment. Trial continued on November 10, 23, 24, 30, and December 1, 7, 8, 14 and 15, 2015. Closing arguments were held on December 15, 2015 and the matter was taken under submission. Both parties were self-represented for the duration of trial.

In this document, the Court announces its tentative decision on the submitted issues, explaining the factual and legal basis for its decision. This tentative decision will become the final statement of decision within the meaning of C.C.P. §632 unless within ten days either party files and serves a document that specifies controverted issues or makes proposals not covered in the tentative

¹ Trial was scheduled to commence November 2, 2015, but was continued to November 9, 2015, because Respondent required a Cantonese interpreter and none was available until November 9, 2015.

decision, pursuant to Rule 3.1590(c) of the California Rules of Court.

Petitioner Charlie Zhao is referred to as "Husband" in this Statement of Decision and Respondent Suzie Young is referred to as "Wife".

I. EVIDENCE CONSIDERED

The Court heard and considered the testimony of the parties, their proffers of evidence, all exhibits admitted into evidence. The Court also considered the written and oral arguments and briefs submitted for both sides. Although an item of testimony or an exhibit may not be mentioned or referred to in this decision, its exclusion does not mean that it was not considered by the Court.

The Court determined the credibility of the parties, taking into consideration their testimony, their demeanor while testifying, the admitted exhibits, and other factors. After hearing the parties' testimony, observing them during the lengthy trial, and considering the exhibits admitted, the Court found Husband not to be a credible witness and found Wife to be a credible witness.

II. STATEMENT OF FACTS

The parties were married in 1991 and separated on May 15, 2009, the date of filing of the dissolution petition. Early in the marriage they had one child, who died at age 13 months. The child was

born with significant health problems and Husband stayed home to care for him while Wife worked to provide financial support for the family. After the child's death, Husband did not return to work, testifying that he could not because he was suffering from depression.

Some years later, Husband enrolled in school to become a nutritionist. In 2001, Husband began working as a dietitian for Kaiser.

Meanwhile, in 1998, the parties purchased a small house in Alhambra. They rented the house to tenants until 2004, when the mortgage was paid off. At that point, the parties moved into the home, along with Wife's mother. In that same time period, 2004-2005, Husband's parents emigrated from China and lived with the parties in the house.

In 2007, Husband purchased a new car for himself for \$29,000 without Wife's consent. Without Wife's consent, he took a loan of \$22,000 from Bank of America and borrowed the balance from his parents. He also opened up a new credit card account from which he made the monthly payments to Bank of America. He testified that he "hoped" that Wife would pay the bills from their household account. Shortly thereafter, on April 7, 2007, Petitioner was terminated from his employment at Kaiser and was unemployed for the next 18 months. Payment of expenses, especially the car payments, became a major

issue between the parties.

In addition, Husband's son from his first marriage, Alan, now age 17, emigrated this same year, 2007, and came to live with the parties, increasing their financial burdens even more.

The parties' small house in Alhambra was now home to 7 people - Husband and Wife, Husband's son Alan, Husband's parents, and Wife's parents - and Husband was unemployed. Three times in 2007 and two more times in 2008, Wife called the police regarding domestic violence by Husband but then refused to prosecute him. There was also domestic violence reported by Husband against his son Alan, and by Alan against Wife.

In October 15, 2008, Husband was reinstated to his position at Kaiser. He received over \$100,000 in back pay yet could show only \$22,000 remaining when the parties separated six months later.

In 2008 or early 2009, the community received \$46,000 as compensation for Wife's back injury, which the parties split evenly. Husband used about \$12,000 to pay off the remaining balance on his car loan.

On May 15, 2009, Husband filed for dissolution, but he and his entire family continued to reside in the Alhambra house with Wife and her mother. Again, the police received calls for

domestic violence at the residence but Wife declined to prosecute.

In November 2009, Husband's sister Cindy emigrated from China.² Only then did Husband and his family- parents, son and adopted sister - move out of the Alhambra house. However, all four of them retained keys to the residence and returned occasionally and unexpectedly. Furthermore, when Husband left, he put his belongings, his son's belongings, and also his parents' belongings in one of the bedrooms and padlocked the door. He also left a large quantity of personal belongings in the garage and in a storage shed and padlocked both of them, also.

In January 2011, Wife obtained an order granting her exclusive possession of the residence. In March 2012, a domestic violence restraining order was issued against Husband for three years, and thereafter renewed for five years. Both restraining orders granted Wife exclusive use of the residence.

During the marriage, Husband gave lavishly to his extended family, transferring at least \$77,000 to China without Wife's consent. After the filing of this action, Husband transferred over

² Husband calls her his adopted daughter, although she is not. Cindy was adopted in China by Husband's parents, making her Husband's sister. When the parents immigrated to the United States in 2005, Cindy remained in China. In 2009, at age 7, she arrived in the United States.

\$46,000 more of community funds to China in direct violation of the restraining orders in the family law summons. Husband testified that the transfers were intended to support his parents but his testimony is not credible in view of the fact that he continued to transfer large sums to China for years after his parents began residing here in the United States. Wife did not agree to the payments, before or after separation, and says that the parties got into arguments each time she discovered what he had done. In fact, Husband used all of his community income (as well as some of Wife's income) to support his relatives, as shown by his 2009 responses to interrogatories, which stated that he provided \$1,000/month to his parents, \$1,950/month to his son Alan, and \$500/month to his sister Cindy, more than his entire take-home pay from Kaiser. At trial, he testified that he had given even more, estimating that he had given his sister Cindy at least \$800/month.

III. CHARACTERIZATION AND DIVISION OF PROPERTY

A. Family Residence in Alhambra

1. Wife's Claim for Reimbursement per Family Code §2640

In 1998, the parties purchased a 900 to 1000 square foot community property house in Alhambra at a purchase price of \$132,800. (Resp. Ex. #35) The down payment was \$53,800 (\$1,000 initial deposit and \$52,800 paid through escrow). The following

year, the parties made a principal payment of \$34,000 to reduce the mortgage.

Wife claimed that she used her parents' separate property savings to pay for \$52,800 of the down payment and also for the following year's principal reduction of \$34,000. Wife provided tracing documentation, showing transfers from her parents' savings before closing and the maturity of a CD shortly before the next year's reduction of principal. (Resp. Ex. # 54; Resp. FL-160 filed 10-19-15).

Husband claimed that the funds came from the parties' own savings and that his salary had paid the mortgage.

The Court finds that Husband lacks credibility on this issue. He could not point to any marital savings accounts with funds of that magnitude in that time period. He also admitted that between 1991, when they married, and 1998, when they purchased the house, he was employed only two years and his earnings were \$ 10,000 or less in those two years. Wife was earning only about \$20,000 per year. The claim that the parties could have saved over \$80,000 during this period is not credible. As for his claim that the mortgage was paid from his salary, the evidence establishes that the house was rented from 1998 - 2004 and it was the rent, not Husband's salary, that paid for the mortgage, taxes, and insurance.

After consideration of all the evidence, the Court finds that Wife has established her claim for reimbursement of \$86,800 under Family Code §2640.

2. Value of Family Residence

Husband claims that the current market value of the house is \$469,000 but his opinion is based only on the website Zillow.com. He admitted that he had no opinion of his own.

Wife claims that value of the house is \$380,000 based on its location on an alley and its lack of air conditioning. She also stated that it would need a new roof and possibly some plumbing, electrical, and termite work. Taking into account of Husband's lack of credibility on the various financial issues, the Court finds that wife's estimate is the more credible one and finds the value of the house to be \$380,000.

The Court awards the residence to Wife, subject to equalization, as set forth in Section VIII., below.

3. Husband's Claim for Reimbursement of Rental Value

Husband seeks reimbursement for the reasonable rental value of the house (so-called "*Watts* charges") from November 2009 to the present. He claims the rental value is \$2,100 per month, again based on

Zillow.com, and that the total for the period is over \$150,000.³

Wife disagreed that she should have to pay rent and also disagreed on the rental value. She testified that until 2004, when the parties moved in, the home was rented for \$750/month. Given the lack of air conditioning and the leaking roof, she does not believe the home would rent for the \$2,100 per month that H claims. The rental value would be further reduced during the period that the second bedroom and the garage were locked by Husband and he and his family continued to have keys and access to the home. In addition, Wife's possession of the home was the result of Husband's domestic violence. In January 2011, Wife obtained an order granting her exclusive possession of the residence. In March 2012, a domestic violence restraining order was issued against Husband for three years, and thereafter renewed for five years. Both restraining orders granted Wife exclusive use of the residence.

The assessment of *Watts* charges is an equitable remedy on which the Court is required to exercise its discretion. Given the periods of time when the home had no rental value due to H's continued use of it for storage, the lack of persuasive evidence regarding market rental value, and then the domestic violence by Husband that resulted in

³ From separation to the present, the parties each paid half of the property taxes and insurance. Repairs, which totaled less than \$1,000, were paid by Wife.

Wife having exclusive possession of the residence, the Court in the exercise of its discretion denies Husband's request for *Watts* charges.

4. Reimbursement of Rental Value to In-Laws

Both parties ask for reimbursement for housing their in-laws during the marriage. From 2004-2009, Husband's son and parents lived in the residence, as did Wife's parents. Husband seeks rent for housing his mother-in-law. Wife seeks rent for housing her in-laws and her stepson.

No legal basis for assessing rent is apparent to the Court. Furthermore, no evidence was presented that either party objected to housing the relatives at the time. For all of these reasons, the Court denies both parties' claims for rent for housing other family members during the marriage.

5. Household furnishings.

The only valuable household item is a piano which Husband claims is worth over \$2,000 and which Wife claims is worth \$2,600, which was the price paid for the piano. Each party asks that the piano be awarded to him/her. Husband is willing to have the rest of the household furnishings (sofa, plasma television, and other appliances) awarded to Wife in exchange for the piano. W claims that the other furnishings are not worth anything, for various reasons.

The Court finds that the piano is worth \$2,000 and that the remaining furnishings do not have any value. The piano and the remaining furnishings are all awarded to Wife.

B. Bank Accounts

1. Eastern International Bank Account #01-00156310 (Resp. Ex. #60, 61)

This account was in Husband's name and had a balance of \$22,751.15 at the time of separation. Husband claims that the funds belong to his parents and are not community property.

Husband's called his mother, Ke Jin Ai, as his first witness but she was not able to testify due to the unavailability of an interpreter in her particular dialect of Mandarin.⁴ The Court then sought offers of proof from each side as to what the witness would say if she were to testify. Both parties provided offers of proof and agreed that the Court could use the proffers in lieu of testimony and that the witness could be excused.

Husband's proffer was that his mother would testify that all the funds in account #01-001563 10 at

⁴ The first Mandarin interpreter was from Taiwan and was unable to communicate with the witness. The Court then requested Mandarin interpreters from mainland China. When they arrived, neither of them could understand the witness' dialect either.

Eastern International Bank, which had a \$22,751.15 balance at the time of separation, were her own and that she had made the money by collecting recyclables and selling them to a company called Unlimited Recycling. All income was in cash and she had her son open an account in his name to hold them for safekeeping.

Wife proffered that on cross-examination she would inquire as to why the witness had no cash receipts and how such enormous amounts could be made from recyclables. She would also ask whether the witness had applied for SSI benefits and MediCal, and when, who had helped her with the forms, whether she knew the financial limits for receiving such benefits, and whether she had disclosed the money in this account as her own when she applied for those benefits. She would also ask whether the witness has her own bank account now.

Husband proffered that on re-direct his mother would testify that she began receiving MediCal soon after she arrived in this country from China in 2005 and that she began receiving SSI benefits in 2010. She would admit that she has no receipts for payments for recyclables but would testify that it is not customary to issue receipts in that business. As to why she had the account put in her son's name, she would say it is because she is illiterate in English. She would say that she did not declare the account in connection with SSI benefits because the account no longer existed by that time. She would testify that

after she closed this account, she did open an account in her own name. She would also testify that she spent all of the funds on a lengthy trip to China.

As for re-cross, Wife would question whether the reason the witness had placed the account originally in son's name was truly literacy issues, based on the witness' admission that she was still illiterate in English yet now had an account in her own name. She also would have the witness admit that large sums had been sent to China by Husband from this account.

After considering the testimony proffered by each party, the Court finds that Husband's proffered testimony is inconsistent with the bank records, which show Husband's use and control over the account, including deposits of community funds and wire transfers to China. The Court finds that the funds were and are community property and orders that the account be divided equally between the parties by awarding it to Husband, subject to equalization, as set forth in Section VIII., below.

2. Eastern International Bank Account
01-80119009 (Petr. Ex. #54, Resp. Ex.
#60)

This account was opened during the marriage in the name of Husband only, but Husband acknowledged that it held community funds. At the date of separation, the balance was \$22,352. The Court orders that the account be divided equally

between the parties by awarding it to Husband, subject to equalization, as set forth in Section VIII., below.

**3. Eastern International Bank Account
#01-00151634 (Petr. Ex. #25)**

Closed in 2006. There is nothing to divide.

**4. Eastern International Bank Account
#02-80034618 (Petr. Ex. #12, Resp. Ex.
#60, #62)**

This was the parties' joint account for payment of household expenses. Husband testified that he closed it in 2007. There is nothing to divide.

5. Capital One Acct# 18732856

This account was opened during the marriage in the name of Husband. At the date of separation, the balance was \$408. (Petr. FL-160, filed Oct. 15, 2015) The Court orders that the account be divided equally between the parties by awarding it to Husband, subject to equalization, as set forth in Section VIII., below.

**6. Cathay Bank Account #1662-635; Wells
Fargo #xx0253 (Petr. Ex. #18, #46, #51)**

Wife opened the Cathay Bank account in 2000 in her name and closed it in 2008. The balance was transferred to a Wells Fargo account. The

account was used by Wife for payment of family expenses. The balance in the Wells Fargo account on date of separation was \$1,259.68. The Court orders that the account be divided equally between the parties by awarding it to Husband, subject to equalization, as set forth in Section VIII., below.

7. 1st Bank and Trust (Petr. Ex.#19)

In 2006-2007, Wife had three different accounts with 1st Bank & Trust. The bank records show transfers between the accounts. Wife testified that she was investing the parties' savings in CDs. As a CD would mature, she would roll it over into another CD. This resulted in accounts being opened and then closed. The Court finds Wife's testimony credible and supported by the bank records. All three accounts were closed prior to separation. There is nothing to divide.

**8. LA Financial Credit Union Account
#1001708280 (Petr. Ex. #20)**

This account was opened during the marriage in Wife's name. Both parties believe that the account is now closed but did not present any evidence as to when it was closed or the balance at time of separation, if it was still open. The last available balance prior to separation is as of Nov. 30, 2008, and that balance was \$1,014.⁵ The Court

⁵ Husband pointed out that, in July 2007, there *was* a \$16,000 deposit and then withdrawal of the same amount the same day. Wife testified that she did not know anything about this deposit

orders that the account be divided equally between the parties by awarding the account to Wife, subject to equalization, as set forth in Section VIII., below.

9. LA Financial Credit Union Account
#35312652

Husband listed this account on his FL-160 disclosure form but at trial stated that he had no evidence to present regarding this account. Therefore, the account is deemed to be \$0 at the time of separation.

10. Fiscal Credit Union, Member No.
2647360 (Resp. Ex. #65)

This account was opened during the marriage in Wife's name. At the time of separation, the balance in this account was \$34.72, and had been incurring a "low savings balance fee" for several months. Both sides agree that the funds were community and the Court therefore orders that they be divided equally between the parties by awarding the account to Wife, subject to equalization as set forth in Section VIII., below.

11. Water & Power Community Credit
Union Account #10025921 <Petr. Ex.

and withdrawal and that it must have been a bank error. Husband did not present any evidence to the contrary.

#26; Resp. Ex. #66)

This account was opened during the marriage, in 2003, in the name of Wife. At the time of separation, the balance in this account was \$29.99, which the Court orders be divided equally between the parties by awarding the account to Wife, subject to equalization, as set forth in Section VIII., below.

12. Washington Mutual Account #494-240993-2 (Petr. Ex. #21)

The bank records show that on February 12, 2009, just before separation, Wife took a loan of \$50,000 from her deferred compensation account (Horizons) and received a check for \$49,900, representing the loan amount less \$100 in fees. She deposited the check into this Washington Mutual account. Some of the funds were used by the parties for a vacation. The remainder of the funds were spent on community expenses and to repay loans. Wife has since repaid the loan to the Horizons account with her post- separation income. (Resp. Ex. #74)

Based on the evidence, the Court finds that the loans that Wife repaid were community debts and, therefore, that the amount borrowed from the Horizons retirement account was all spent on community purposes. The Court finds that Wife is not obligated to reimburse the community for the \$50,000 loan.

**13. East-West Bank, Acct. #xx3464 and xx0347
(Petr. Ex. #27)**

These accounts were closed in 2008 -- nothing to divide.

**14. Citi bank 5-year CD Account xx3474,
xx4032**

Husband contends that Wife had a 5-year CD with Citibank that was worth \$28,103 at the time of separation. The documents he offered, however, do not support this claim. (see Petr. Ex. #22) The bank records show that Wife opened a CD account xx3474, which had a balance of \$28,103 in 2006. She then rolled over the funds to another CD account xx4032. That account was closed in June 2007. The Court finds that there is nothing to divide.

**15. World Savings Accounts xx4863,
xx9689, xx8209 (Petr. Ex. #23)**

Early on in the marriage, three accounts were opened in Wife's name with World Savings, which then merged into Wachovia, and then became Wells Fargo. Several other accounts at World Savings were in both parties' names. (Petr. Ex. #24, pp. 28-31) By the time of separation, "not much was left" in these accounts, according to Husband. In the absence of any evidence that these accounts were still open and still contained any funds at the date of separation, the Court finds that the accounts had a value of \$0 as of the date of separation. There is nothing to divide.

C. Retirement Accounts

Husband has five retirement accounts with a total value of \$27,849 as of the time of separation. Wife has three retirement accounts with a total value of \$268,622 as of the time of separation. Each account is discussed below.

1. Husband's Kaiser Retirement Accounts (Petr. Ex. #48, #49, #53)

Husband started working at Kaiser during the marriage and, at time of separation, had two retirement accounts. One was funded by Kaiser (acct# 093150, called "union") and the other was a voluntary contribution plan (acct # 090998, called "TSA"). At the time of separation, the total of the account balances was \$ 15,098. (Petr. Ex. #48, #49).

Husband testified that the pension plans had other names in earlier time periods and that he had drafted a QDRO with those plan names (Petr. Ex. #53), just in case, but that he believed those plans were no longer in existence. Wife argued that they must be still in existence but presented no evidence to support her position.

2. Husband's IRA Accounts (Petr. Ex. #49, #51)

Husband had a Vanguard/Smith Barney account #61H-01451-19 valued at \$8,063.81 at the time of separation, a Vanguard/1st Bank CD

#44997 0000 104, valued at \$2,263 at the time of separation, and a UCB account #6161 248 0211, valued at \$2,424 at the time of separation.

3. Wife 's LA County Retirement
ccounts (Respondent's FL-160, filed
10-19-15)

Wife's LACERA account, the County's alternative to Social Security, had a balance of \$129,307 as of December 31, 2008, a few months prior to separation. No documentation was provided as to the value any closer to the date of separation than that.

Wife's Horizons Plan, the deferred compensation plan for County employees, had a balance of \$133,639 at the time of separation. Husband argues that the balance should be increased by \$50,000 to take into account the loan that she took three months earlier. The Court has already accounted for the loan. See ¶B.12, above (Washington Mutual).

4. Wife's IRA Accounts (Petr. Ex. #9,
Resp. Ex. #52)

Husband contended at trial that Wife had two IRA accounts at Citigroup as of the date of separation, account# 61H-10179-1 1 and account# 61H-06041-15. Wife testified and presented evidence that there had been two

Citigroup accounts at an earlier time but that, prior to separation, one of the accounts had been cashed in to pay the parties' mounting credit card debts. As of the date of separation, the only documented account was account # 61H-10179-11. Husband argued that Wife had hidden the other account. On the final day of evidence at trial, Husband admitted that there was just one account and dropped this claim.

As to the remaining account, # 61H-10179-11, the evidence shows that it was opened in 2007 with a deposit of \$10,000. As the economy declined, so did the value of the account. By March 31, 2009, a month or two before separation, the value had sunk to \$5,676. (Resp. Ex. #52, at pp. 32-34)

5. Division of Retirement Accounts

The Court awards Husband's retirement accounts to him and awards Wife's retirement accounts to her, subject to equalization, as set forth in Section VIII., below.

6. Husband's Misconduct

At trial, Husband presented numerous QDROs that he had prepared himself and submitted to both parties' pension funds in order to have them divide the parties' pension accounts, all without notice to W. (Petr. #48, #52, #53) The substance of

the QDROs divides the retirement benefits equally, thereby awarding to Husband half of the community portion but also half of the separate property portion, including Wife's separate property benefits accruing during the 6 ½ years since the parties separated. His attempt to obtain significant sums to which he was not entitled, without any notice to Wife, was intentionally deceitful. It also was in violation of the Standard Family Law Restraining Orders set forth in the summons FL-110. Because he was unsuccessful, however, and also because Wife did not incur any attorney's fees because of his conduct, the Court in the exercise of its discretion declines to impose sanctions for this particular misconduct.

D. Vehicles

In 2007, Husband purchased a new car for himself, a Honda Pilot, for \$29,000, without Wife's consent. He paid for it by taking a \$22,000 loan from Bank of America, by borrowing money from his parents, and by opening up a new credit card account, all without Wife's knowledge or consent. He testified that he "hoped" that Wife would pay these bills from their household account. Shortly thereafter, on April 7, 2007, Petitioner was terminated from his employment at Kaiser and was unemployed for the next 18 months. About two years later, the community received \$46,000

as compensation for Wife's back injury, which the parties split evenly. Husband used about \$12,000 to pay off the remaining balance on his car loan and then filed for dissolution.

Each party is now in possession of one vehicle. Husband is in possession of the 2007 Honda Pilot and Wife is in possession of a 2000 Honda Accord. No evidence was presented as to the value of either vehicle. Therefore the Court awards each vehicle at a \$0 value to the party now in possession of that vehicle.

E. Kern County Land

In 2007, the parties purchased three parcels of land in Kern County. They paid more than \$20,000 for the parcels. Husband believes that the parcels are now worth about the same as the purchase price. Wife believes that they are worth far less, but did not have an opinion on value. Wife suggested that each party be awarded one parcel and that the Court split the third parcel 50-50. Husband stated that he did not care how the Court divides the parcels.

The Court awards all three parcels to Husband at his claimed value \$20,000.

F. Burial Plots

In 2001, the parties purchased 4 plots in

Rose Hill cemetery. Wife's parents are now buried in two of them. The remaining two plots were intended for the parties. Because of this divorce, Wife no longer wants to be buried next to Husband. She asks that both the plots be awarded to her. The parties' son, who died as a child, was cremated and Wife wants to use the other plot to bury his ashes. Husband does not want to give up his burial plot, although he says that he might donate it for their son. Husband believes that the plots are worth about \$ 10,000 each. Wife believes that they are worth about \$6,000 each.

The Court finds that it is appropriate for Wife to have the plots as her parents are buried there also. The Court awards both plots to Wife at the value claimed by Husband, \$10,000 each, or a total of \$20,000.

G. 2008 Tax Debts

Husband and Wife have been filing separate tax returns since 2007. Husband claims he owes taxes for 2008 in the amount of \$5,097 federal and \$1,882 state. He asks the Court to divide this debt equally between the parties. The Court finds that this tax liability is the separate liability of Husband and awards it to him as his sole and separate debt.

H. Life Insurance

The parties have two life insurance policies, one

with Great West and the other with MetLife. No evidence of ownership or value was submitted. Therefore the Court awards each policy at \$0 value to the named insured(s) as that person's sole and separate property, and subject to any loans or encumbrances thereon.

I. Jewelry (Rings and Pearls)

Husband originally sought to divide jewelry held by Wife (rings and pearls) but at trial admitted that they were gifts to Wife and stated that he was not seeking any division or reimbursement. Therefore the Court finds that the jewelry in the possession of Wife constitutes a gift and awards it to her as her sole and separate property.

J. Miscellaneous

Except as specified above, the Court awards to each party as his or her sole and separate property, the following: all personal property in that party's possession, all bank and credit union accounts in that party's name, and all loans and credit cards in that party's name.

IV. BREACH OF FIDUCIARY DUTY CLAIMS

Each party claims a breach of fiduciary duties by the other party. Husband claims that Wife drained their accounts of over \$300,000 in cash during the marriage, while Wife claims that Husband drained the accounts. Based on the

evidence presented and having determined Husband not to be a credible witness and Wife to be a credible witness, the Court upholds Wife's claim and rejects Husband's claim. The evidence is summarized below.

Husband's primary contention is that Wife took over \$40,000 in cash out of a joint account at Eastern International Bank Account #02-80034618 (Resp. Ex. #60, #62). This account was opened in November 1999 and closed in July 2007. Husband testified that beginning in 2001, his Kaiser paychecks of about \$1,250 every two weeks were deposited into this account and then Wife wrote checks on this account to pay for all household expenses. He testified that Wife was the one who paid all the household expenses, that all household expenses were paid by check, and asks the Court to conclude that all cash withdrawals were by Wife for non-community purposes. The evidence establishes the opposite, namely that it was Husband who was draining the joint account with cash withdrawals. Wife testified that this was done without her knowledge or consent the Court finds her a credible witness on this issue.

The bank records show that from 2005 through 2007, both Husband and Wife wrote checks on the account. (Resp. Ex. #60 at pp. 95-110; Resp. Ex. #21, pp. 48-73) While Wife wrote checks that were for typical household expenses, Husband wrote checks to himself, withdrawing money from the joint account and deposited it

directly into a separate account under his name alone, Eastern International #8011 7926. (Resp. Ex. #21, pp. 48-73) From there, he wired the funds to China (Resp. Ex. #21, #39) From the opening of the joint account in 1999 until it was closed in December 2007, Husband wired over \$66,000 to China.

Meanwhile, when Husband was terminated from his job at Kaiser in April 2007, he opened up a more complex system of accounts. On April 9, 2007, only two days after being terminated from his job, Husband opened another Eastern International bank account, this one under his name alone, #80118851. In October and November, he opened up two more accounts under his name, #80119009 and #00156310. From these three new accounts, Husband sent an additional \$6,570 to China before separation and sent \$46,740 more after separation.

Altogether, Husband transferred \$124,317 without Wife's written consent. In view of Husband's limited income⁶ and the fact that he was supporting his relatives here in the United States rather than the other way around, the Court finds that the only source of these funds was the community. Husband also received funds back from China in the amount of \$26,485 and did not share them with Wife. Wife claimed that these

⁶ The back pay that Husband received when he was reinstated at Kaiser was community income.

funds were a return on funds he had sent to China for investment purposes. Husband claimed that it was repayment of a \$30,000 loan he had made on behalf of his niece in China. Either way, the Court finds that the funds were community in character.

In addition, Husband was giving gifts of community funds to his parents and his sister on a monthly basis without Wife's written consent.⁷ The amount was \$1,000/month for his parents and \$800/month for his sister Cindy from 2005 to separation in 2009, a total of about 4 ½ years, or \$97,200.

In sum, the Court finds that Husband's transfers to China were \$124,317, the sums received from China were \$26,485, and the gifts to relatives in the United States were \$97,200, for a total of \$247,999 that was gifted and/or transferred without Wife's written consent in violation of Family Code §1100(b) and/or §1101.

As for Husband's claims against Wife, the Court finds the evidence insufficient to establish any misconduct on her part. For example, Husband questioned Wife's withdrawal of about \$17,000 from savings in the Water & Power

⁷ Wife also contends that Husband improperly paid for the expenses of his son with community funds. Because of Husband's legal obligation to support his son, the Court finds that the absence of written consent for these payments does not violate Family Code §1100(b).

Community Credit Union account #10025921 (Petr. Ex. #26, Resp. Ex. #66) during the period late November 2006 to February 2007. Wife testified that the money was needed for household expenses. Husband testified that he was paying all household expenses with his Kaiser paycheck at that time, pointing to the parties' joint account, and suggesting that Wife must have withdrawn the savings for some other purpose. What Husband ignores is that he sent over \$17,000 to China that year, which represented over half his paycheck. Wife's testimony that she needed to withdraw \$17,000 from savings that year to cover the household expenses is very credible.

Husband also claims that Wife diverted \$28,000 when she withdrew the funds and closed a Citibank CD account the next year, in June 2007. (See ¶II.B.14, above) The only evidence that he has is that the funds were withdrawn and the account was closed. Husband asks the Court to infer that the funds were all used for non-community purposes. Again, Husband ignores the family circumstances in 2007, a year in which Husband lost his job yet purchased a new car, Husband's son came to live with the parties, and of the 7 people living in the household, Wife was the only earning an income. Under these circumstances, Wife's testimony that the funds were needed for expenses is very credible.

Overall, on Husband's claims that Wife took

community funds for non-community purposes, Wife testified with specificity as to each questioned transaction, her use of the funds, and the community financial position. The Court finds Wife's testimony to be credible and consistent with the bank records.

After consideration of all of the evidence, the Court finds by clear and convincing evidence that significant sums were, in fact, diverted away from the community but that it was Husband who was engaged in the diversion, not Wife. Husband was diverting funds away from the community -- to his parents, to his sister Cindy, and to unknown people in China - without Wife's knowledge, without Wife's written consent, in violation of his fiduciary duties, and in violation of the Standard Family Law Restraining Orders in the Summons (FL-110). And then, at trial, he tried to pin the diversion of funds on Wife. Only through Wife's painstaking collection and analysis of bank records was Husband's conduct established. The Court finds that in diverting the community funds, and then in trying to cover up the diversion by blaming it on Wife, Husband acted with fraud, oppression and malice. The remedy for such conduct, as set forth in Family Code §1101(h) is the award to Wife of an amount equal to 100% of the funds wrongfully transferred, a total of \$247,999.

V. SPOUSAL SUPPORT

Husband is requesting spousal support from Wife in an unspecified amount.

The Court's decision on permanent spousal support is based on consideration of the factors set forth in Family Code §4320, taking into account the applicable circumstances of the parties. The decision is not based upon any amount of temporary support previously ordered, denied, or paid. *Marriage of Schulze* (1997) 60 Cal. App. 4th 519; *Marriage of Zywiciel* (2000) 83 Cal. App. 4th 1078. The Court did not consider or rely upon any "guideline amount" of temporary support by reference to the DissoMaster TM computer program or otherwise. *Marriage of Burlini* (1983) 143 Cal. App. 3d 65.

The Court has considered each of the Family Code §4320 factors to determine the length and amount of spousal support. *Marriage of Cheriton* (2001) 92 Cal. App. 4th 269. In making its spousal support order, the trial court possesses broad discretion in the weighing process contemplated by Section 4320, with the goal of accomplishing substantial justice for the parties in the case before it. *Marriage of Kerr* (1999) 77 Cal. App. 4th 87. The trial court has discretion to determine the appropriate weight to accord to each factor and has exercised its discretion based on the circumstances of the parties, especially their reasonable needs and their financial abilities. *Marriage of Baker* (1992) 3 Cal. App. 4th 491, 498; *Marriage of Watt* (1989) 214 Cal. App. 3d 340, 347; *Marriage of Prietsch & Calhoun*

(1987) 190 Cal. App. 3d 645, 655.

Based on the evidence presented, the Court finds that the marital standard of living was lower middle income, based on two people living very frugally. They paid rent of \$500/month while renting out the home they purchased for \$750/month. Only when their mortgage was paid off did they move into the home themselves.

Husband is 59 years old and Wife is 65 years old. Both are currently on disability leave from employment. Each one shows expenses of about \$6,000 per month. Wife's retirement income will be about \$3,700 per month until she reaches age 70, when it will be about \$5,000 per month. She is not eligible for Social Security. Husband did not introduce any evidence as to his monthly retirement income, but he is eligible for Social Security.

There is a significant history of domestic violence by Husband, resulting in a domestic violence restraining order in 2012, which was renewed in 2015 for five years and will expire in 2020.

Husband's major argument is that Wife's retirement accounts are about 10 times larger than his and will provide her with a comfortable retirement whereas his retirement accounts will not. Wife points out that if Husband had not transferred so much of their savings to China, he could have adequate retirement savings now.

Having considered all the evidence presented, and having considered all of the factors under Fam. C. §4320, the Court in the exercise of its discretion declines to award any spousal support to Husband.

VI. COSTS ON APPEAL

Wife initially sought a judgment of nullity of marriage, and the matter was tried and denied by the Court. Wife then appealed but the decision was upheld on appeal. Husband now requests an award of his costs on appeal.

The Court denies Husband's request as untimely. The Court of Appeal's remittitur in this case, issued on May 14, 2015, ordered that Husband could recover the costs. He did not, however, file a Memorandum of Costs. Instead, he compiled his costs and presented them in a trial exhibit, Petr. Ex. #8.

Per Cal. Rules of Court, Rule 8.278 "[w]ithin 40 days after the clerk sends notice of issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs under rule 3.1700." Consequently, Husband's memorandum of costs was due before the end of June 2015. He did not submit his costs within that time period. Here the request for costs on appeal was made 5 months after the remittitur issued and is simply not timely.

VII. ATTORNEY'S FEES

Husband seeks recovery of \$6,800 in attorney's fees and costs in connection with subpoenas for bank records. He contends that the high fees and costs were incurred due to lack of cooperation by Wife. The Court finds the evidence insufficient to establish the claim of lack of cooperation by Wife or her counsel at that time. This request is denied.

Husband also seeks recovery of his attorney's fees and costs in connection with Wife's deposition on June 30, 2011. He claims that she was faking a back problem and that she delayed the deposition and increased his costs. Wife claims that she was truly suffering from back pain and that she needed frequent breaks, which did prolong the deposition. The Court finds Husband has failed to prove his claim. Wife's back problems are well-established. In fact, the parties received a significant financial settlement during the marriage for her back injury and Husband used part of it to pay off the loan on his Honda Pilot. Husband has not presented any evidence of bad faith or malingering by Wife on the day of the deposition. Under the circumstances, the evidence is insufficient to establish the basis for recovery of fees or costs and, therefore, this request by Husband is also denied.

Husband also seeks recovery of \$50,000 for his fees in connection with the earlier trial, which

was on Wife's claim of nullity. Husband claims that she took an unreasonable position and that he should be awarded his fees. The Court finds the evidence insufficient to establish that Husband incurred \$50,000 in fees at the prior trial and/or that Wife's position was so unreasonable as to entitle Husband to an award of fees.

Finally, Wife seeks to recover \$80,000 in fees that she incurred with prior counsel. No legal basis for recovery of the fees was given. Most of the fees appear to have been incurred in connection with the earlier trial on nullity. Assuming that the request is based on Family Code §2030 and a disparity in the parties' access to funds or other financial circumstances, the Court denies the request on the grounds that the evidence does not support such an award.

VIII. EQUALIZATION PAYMENT

	Item	Value	To H	To W
1	Family Residence	\$293,200 ⁸		W
2	Piano & Household Furniture	\$2,000		W
3	EI #xx6310	\$22,751	H	
4	EI #xx9009	\$22,352	H	

⁸ \$380,000 less \$86,800 (Wife's separate property contribution) leaves \$293,200 as the amount to be divided equally between the parties.

5	Capital One	\$408	H	
6	Cathay Bank	\$1,260		W
7	LA Financial Credit Union	\$1,014		W
8	Fiscal Credit Union	\$35		W
9	W&P Community Credit Union	\$30		W
10	Kaiser Retirement Accounts	\$27,849	H	
11	Wife's Retirement Accounts	\$268,622		W
12	2007 Honda Pilot	\$0	H	
13	2000 Honda Accord	\$0		W
14	Kern County Parcels (3)	\$20,000	H	
15	Burial Plots (2)	\$20,000		W
	Total	\$679,521	\$93,360	\$586,161
	Equalization	\$339,760	+\$246,400	- \$246,000
	Family Code 1101(h) remedy	\$247,999 owed to W	-\$247,999	
	Final Amount Due		-\$1,599	

After taking into account the division of property set forth above and also granting to Wife 100% of the value of the funds transferred by Husband in violation of his legal obligations, the Court finds that Husband owes Wife the amount of \$1,599.

The Court orders that Husband pay \$1,599 to Wife within 30 days after entry of judgment in this matter. If not paid in full, the unpaid balance shall accrue interest at the legal rate from that day forward.

VIII. PREPARATION OF JUDGMENT

Respondent is directed to prepare and, within 30 days, to submit a Judgment in accordance with this Statement of Decision.

DATED: December 30, 2015

/s/ Christine Byrd

JUDGE OF THE SUPERIOR COURT

The Fifth Amendment of the U.S. Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be **deprived of life, liberty, or property**, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment of the U.S. Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Court of Appeal, Second Appellate District, Division
8 – No. B271103

S245449

IN THE SUPREME COURT OF CALIFORNIA

En Banc

Filed

Jan 17 2018

Stamped by Jorge Navarrete Clerk

CHARLIE ZHAO, Plaintiff and Appellant

v.

SUZIE YOUNG, Defendant and Respondent

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

5 U.S. Code § 706 - Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it

cited by a party, and due account shall be taken of the rule of prejudicial error.

29 U.S. Code § 1056(d)

(d) Assignment or alienation of plan benefits

Will not attach the entire Section of 29 U.S. Code § 1056(d) here due to its large volume.

26 U.S.C. §414(p)

(p) Qualified domestic relations order defined For purposes of this subsection and section 401(a)(13)—

Will not attach the entire Section of 26 U.S.C. §414(p) here due to its large volume.