

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

DIVISION EIGHT

FILED

NOV 3 - 2017

JOSEPH A. LANE

Clerk

Deputy Clerk

CHARLIE ZHAO,

Plaintiff and Appellant,

v.

SUZIE YOUNG,

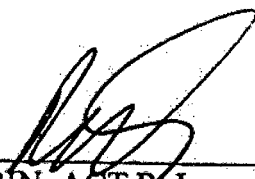
Defendant and Respondent.

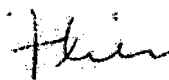
B271103

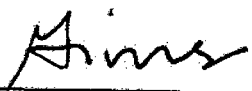
(Los Angeles County
Super. Ct. No. GD044309)

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.


RUBIN, ACT P. J.


FLIER, J.


GRIMES, J.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

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

¹ All subsequent statutory references are to the Family Code.

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.

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

On December 30, 2015, the court issued its tentative decision explaining its factual findings, 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 spouse's undivided one-half interest in the community estate." Remedies

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

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

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 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 role 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.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Suzie Young (In Propria Persona) 909 S. Electric Lane Alhambra, CA 91803 TELEPHONE NO.: (626) 576-7679 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Respondent, In Propria Persona		FOR COURT USE ONLY FILED Superior Court of California County of Los Angeles MAR 09 2016 Sherri R. Carter, Executive Officer/Clerk By <u>Carl Bushnell</u> , Deputy Carl Bushnell
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District		
PETITIONER: Charlie Yingzhou Zhao RESPONDENT: Suzie Young		
NOTICE OF ENTRY OF JUDGMENT		CASE NUMBER: GD044309

You are notified that the following judgment was entered on (date):

MAR 09 2016

1. ☒ Dissolution
2. ☐ Dissolution—status only
3. ☐ Dissolution—reserving jurisdiction over termination of marital status or domestic partnership
4. ☐ Legal separation
5. ☐ Nullity
6. ☐ Parent-child relationship
7. ☐ Judgment on reserved issues
8. ☐ Other (specify):

Date:

MAR 09 2016

Clerk, by

Carl Bushnell

Deputy

—NOTICE TO ATTORNEY OF RECORD OR PARTY WITHOUT ATTORNEY—

Under the provisions of Code of Civil Procedure section 1952, if no appeal is filed the court may order the exhibits destroyed or otherwise disposed of after 60 days from the expiration of the appeal time.

STATEMENT IN THIS BOX APPLIES ONLY TO JUDGMENT OF DISSOLUTION

Effective date of termination of marital or domestic partnership status (specify):

MAR 09 2016

WARNING: Neither party may remarry or enter into a new domestic partnership until the effective date of the termination of marital or domestic partnership status, as shown in this box.

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the *Notice of Entry of Judgment* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed

at (place): Los Angeles

, California, on (date)

MAR 09 2016

Date:

MAR 09 2016

Clerk, by

Carl Bushnell

Deputy

Name and address of petitioner or petitioner's attorney

Charlie Yingzhou Zhao

P.O. Box 3901

Alhambra, CA 91803

Name and address of respondent or respondent's attorney

Suzie Young

909 S. Electric Lane

Alhambra, CA 91803

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Suzie Young (In Propria Persona) 909 S. Electric Lane Alhambra, CA 91803 TELEPHONE NO.: (626) 576-7679 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Respondent, In Propria Persona	FOR COURT USE ONLY CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles MAR 09 2016 Sherri R. Carter, Executive Officer/Clerk By: Carl Bushnell, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District	
MARRIAGE OR PARTNERSHIP OF PETITIONER: Charlie Yingzhou Zhao RESPONDENT: Suzie Young	
JUDGMENT ☒ DISSOLUTION ☐ LEGAL SEPARATION ☐ NULLITY ☐ Status only ☐ Reserving jurisdiction over termination of marital or domestic partnership status ☐ Judgment on reserved issues Date marital or domestic partnership status ends: MAR 09 2016	CASE NUMBER: GD044309

1. ☐ This judgment ☐ contains personal conduct restraining orders ☐ modifies existing restraining orders.
 The restraining orders are contained on page(s) _____ of the attachment. They expire on (date): _____
2. This proceeding was heard as follows: ☐ Default or uncontested ☐ By declaration under Family Code section 2336
☒ Contested ☐ Agreement in court
 a. Date: November 9, 2015 Dept.: 65 Room: _____
 b. Judicial officer (name): Christine Byrd ☐ Temporary judge
 c. ☒ Petitioner present in court ☐ Attorney present in court (name): _____
 d. ☒ Respondent present in court ☐ Attorney present in court (name): _____
 e. ☐ Claimant present in court (name): _____ ☐ Attorney present in court (name): _____
 f. ☐ Other (specify name): _____
3. The court acquired jurisdiction of the respondent on (date): June 1, 2009
 a. ☐ The respondent was served with process.
 b. ☒ The respondent appeared.

THE COURT ORDERS, GOOD CAUSE APPEARING

4. a. ☒ Judgment of dissolution is entered. Marital or domestic partnership status is terminated and the parties are restored to the status of single persons
 (1) ☒ on (specify date): **MAR 09 2016**
 (2) ☐ on a date to be determined on noticed motion of either party or on stipulation.
- b. ☐ Judgment of legal separation is entered.
- c. ☐ Judgment of nullity is entered. The parties are declared to be single persons on the ground of (specify): _____
- d. ☐ This judgment will be entered nunc pro tunc as of (date): _____
- e. ☐ Judgment on reserved issues.
- f. The ☐ petitioner's ☒ respondent's former name is restored to (specify): Suzie Young
- g. ☐ Jurisdiction is reserved over all other issues, and all present orders remain in effect except as provided below.
- h. ☐ This judgment contains provisions for child support or family support. Each party must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this judgment. The parents must notify the court of any change in the information submitted within 10 days of the change, by filing an updated form. The *Notice of Rights and Responsibilities—Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

CASE NAME (Last name, first name of each party):

In re the Marriage of Charlie Yingzhou Zhao and Suzie Young

CASE NUMBER:

GD044309

4. i. ☐ The children of this marriage or domestic partnership are:
- (1) ☐ Name Birthdate
- (2) ☐ Parentage is established for children of this relationship born prior to the marriage or domestic partnership
- j. ☐ Child custody and visitation (parenting time) are ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement which contains the information required by Family Code section 3048(a).
- (2) ☐ Child Custody and Visitation Order Attachment (form FL-341).
- (3) ☐ Stipulation and Order for Custody and/or Visitation of Children (form FL-355).
- (4) ☐ Previously established in another case. Case number: Court:
- k. ☐ Child support is ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement which contains the declarations required by Family Code section 4065(a).
- (2) ☐ Child Support Information and Order Attachment (form FL-342).
- (3) ☐ Stipulation to Establish or Modify Child Support and Order (form FL-350).
- (4) ☐ Previously established in another case. Case number: Court:
- l. ☒ Spousal, domestic partner, or family support is ordered:
- (1) ☐ Reserved for future determination as relates to ☐ petitioner ☐ respondent
- (2) ☐ Jurisdiction terminated to order spousal or partner support to ☐ petitioner ☐ respondent
- (3) ☐ As set forth in the attached Spousal, Partner, or Family Support Order Attachment (form FL-343).
- (4) ☐ As set forth in the attached settlement agreement, stipulation for judgment, or other written agreement.
- (5) ☒ Other (specify):
See attachment to judgment, incorporated by reference herein.
- m. ☒ Property division is ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement.
- (2) ☐ Property Order Attachment to Judgment (form FL-345).
- (3) ☒ Other (specify):
See attachment to judgment, incorporated by reference herein.
- n. ☒ Attorney fees and costs are ordered as set forth in the attached
- (1) ☐ Settlement agreement, stipulation for judgment, or other written agreement.
- (2) ☐ Attorney Fees and Costs Order (form FL-346).
- (3) ☒ Other (specify):
See attachment to judgment, incorporated by reference herein.
- o. ☐ Other (specify):

Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment's provisions. Jurisdiction is reserved to make other orders necessary to carry out this judgment.

Date:

5. Number of pages attached: 9

☒ JUDICIAL OFFICER
SIGNATURE FOLLOWS LAST ATTACHMENT
NOTICE

Dissolution or legal separation may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar property interest. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions.

A debt or obligation may be assigned to one party as part of the dissolution of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.

An earnings assignment may be issued without additional proof if child, family, partner, or spousal support is ordered.

Any party required to pay support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.

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.

1 Eastern International Bank (account #01-00156310): The Court orders that the account
2 (with a balance of \$22,751.15 as of the date of separation) be divided equally between the
3 parties by awarding it to Charlie Yingzhou Zhao, subject to equalization as set forth
4 hereinbelow in the section entitled "Equalization Payment".

5
6 Eastern International Bank (*account #01-80119009): The Court orders that the account
7 (with a balance of \$22,352.00 as of the date of separation) be divided equally between the
8 parties by awarding it to Charlie Yingzhou Zhao, subject to equalization as set forth
9 hereinbelow in the section entitled "Equalization Payment".

10
11 Eastern International Bank (account #01-00151634): The account was closed in 2006.
12 There is nothing to divide.

13
14 Eastern International Bank (account #02-80034618): The account was close in 2007.
15 There is nothing to divide.

16
17 Capital One (account #18732856): The Court orders that the account (with a balance of
18 \$408.00 as of the date of separation) be divided equally between the parties by awarding it
19 to Charlie Yingzhou Zhao, subject to equalization as set forth hereinbelow in the section
20 entitled "Equalization Payment".

21
22 Cathay Bank (account #1662-635); Wells Fargo (account #xx0253): The monies
23 previously held in Cathay Bank (account #1662-635) were transferred to Wells Fargo
24 (account #xx0253). The Court orders that the account (with a balance of \$1,259.68 as of
25 the date of separation) be divided equally between the parties by awarding it to Suzie
26 Young, subject to equalization as set forth hereinbelow in the section entitled
27 "Equalization Payment".

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

3
4 LA Financial Credit Union (account #1001708280): The Court orders that the account
5 (with a balance of approximately \$1,014.00 as of the date of separation) be divided
6 equally between the parties by awarding the account to Suzie Young, subject to
7 equalization as set forth hereinbelow in the section entitled "Equalization Payment".

8
9 LA Financial Credit Union (account #35312652): The court finds that the account had a
10 zero balance as of the date of separation. There is nothing to divide.

11
12 Fiscal Credit Union (Member No. 2647360): The Court orders that the account (with a
13 balance of \$34.72 as of the date of separation) be divided equally between the parties by
14 awarding the account to Suzie Young, subject to equalization as set forth hereinbelow in
15 the section entitled "Equalization Payment".

16
17 Water & Power Community Credit Union (account #10025921): The Court orders that
18 the account (with a balance of \$29.99 as of the date of separation) be divided equally
19 between the parties by awarding the account to Suzie Young, subject to equalization as set
20 forth hereinbelow in the section entitled "Equalization Payment".

21
22 Washington Mutual (account #494-240993-2): The bank records show that on February
23 12, 2009, just before separation, Suzie Young took a loan of \$50,000 from her deferred
24 compensation account (Horizons) and received a check for \$49,900, representing the loan
25 amount less \$100 in fees. She deposited the check into this Washington Mutual account.
26 Some of the funds were used by the parties for a vacation. The remainder of the funds
27 were spent on community expenses and to repay loans. Suzie Young has since repaid the
28 loan to the Horizons account with her post-separation income. Based on the evidence, the

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

5
6 East-West Bank (account #xx3464 and #xx0347): The court finds that these accounts
7 were closed in 2008. There is nothing to divide.

8
9 Citibank 5-year CD (account #xx3474 and #xx4032): With respect to the accounts at
10 Citibank, the court finds that they were closed in June 2007. There is nothing to divide.

11
12 World Savings (account #xx4863, #xx9689, and #xx8209): The court finds that the
13 accounts had a value of \$0 as of the date of separation. There is nothing to divide.

14
15 Charlie Yingzhou Zhao's Kaiser Retirement: The retirement funded by Kaiser (referred
16 to as account #093150, called "union") is awarded to Charlie Yingzhou Zhao. The
17 retirement account that was a voluntary contribution plan (referred to as account #090998,
18 called "TSA") is awarded to Charlie Yingzhou Zhao.

19
20 Charlie Yingzhou Zhao's IRA Accounts: The following IRA accounts are all awarded to
21 Charlie Yingzhou Zhao: Vanguard/Smith Barney account #61H-01451-19 (valued at
22 \$8,063.81 at the time of separation); Vanguard/1st Bank CD #44997 0000 104 (valued at
23 \$2,263 at the time of separation); and, UCB account #6161 248 0211 (valued at \$2,424 at
24 the time of separation).

25
26 L.A.C.E.R.A: The "Los Angeles County Employees Retirement Association"
27 (hereinafter referred to as "LACERA") is awarded to Suzie Young as her sole and separate
28 property and any hold or restriction shall be removed effective upon entry of this

1 judgment. If there is a legal hold or restriction against the member's account or benefits as
2 a result of the non-member former spouse's claim from notice to the plan administrator or
3 a "Joinder", said hold or restriction shall be removed effective upon entry of this
4 judgment. If a Joinder has been filed against LACERA, the Joinder is hereby vacated.
5

6 Horizons: The "County of Los Angeles Deferred Compensation and Thrift Plan
7 (Horizons)" (hereinafter referred to as "Horizons") is awarded to Suzie Young as her sole
8 and separate property and any hold or restriction shall be removed effective upon entry of
9 this judgment. If there is a legal hold or restriction against the member's account or
10 benefits as a result of the non-member former spouse's claim from notice to the plan
11 administrator or a "Joinder", said hold or restriction shall be removed effective upon entry
12 of this judgment. If a Joinder has been filed against Horizons, the Joinder is hereby
13 vacated.
14

15 Suzie Young's IRA Account: As to Citigroup account number # 61H-06041-15, said
16 account was closed prior to the date of separation – there is nothing to divide. As to
17 Citigroup account #61H-10179-11 (with a balance of \$5,676 as of the date of separation),
18 said account is awarded to Suzie Young.
19

20 2007 Honda Pilot (#5XXP077): The 2007 Honda Pilot (#5XXP077) is awarded to
21 Charlie Yingzhou Zhao.
22

23 2000 Honda Accord LX (FD) (#4JUZ080) The 2000 Honda Accord (#4JUZ080) is
24 awarded to Suzie Young.
25

26 Kern County Land The court awards all of the following three (3) parcels of land to
27 Charlie Yingzhou Zhao (with a combined total fair market value of \$20,000.00):
28

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

2 LOT 264 OF TRACT 3186 IN THE CITY OF CALIFORNIA
3 CITY, COUNTY OF KERN, STATE OF CALIFORNIA AS
4 PER MAP RECORDED JULY 11, 1968 IN BOOK 16, PAGES
5 75 THROUGH 92, INCLUSIVE, OF MAPS, IN THE OFFICE
6 OF THE COUNTY RECORDER OF SAID COUNTY.

7
8 EXCEPTING THEREFROM ALL OIL, GAS, MINERALS,
9 HYDROCARBON SUBSTANCES AND ALL WATER
10 APPURTENANT THERETO, AS GRANTED AND
11 RESERVED IN PREVIOUS DEEDS OF RECORD.

12
13 PARCEL NUMBER 2 (A.P.N. 262-141-09-00-5):

14 LOT 629 OF TRACT 3060 IN THE COUNTY OF KERN,
15 STATE OF CALIFORNIA AS PER MAP RECORDED IN
16 BOOK 15, PAGES 45 TO 54 INCLUSIVE OF MAPS IN THE
17 OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

18
19 EXCEPTING THEREFROM ALL OIL, GAS, MINERALS,
20 HYDROCARBON SUBSTANCES AND ALL WATER AND
21 WATER RIGHTS APPURTENANT THERETO, AS
22 GRANTED AND RESERVED IN PREVIOUS DEEDS OF
23 RECORD.

24
25 PARCEL NUMBER 3 (A.P.N. 204-353-06-4):

26 Lot 143 of Tract 2122 as per map recorded in Book 10, Pages
27 100 to 100B inclusive of Maps in the Office of the County
28 Recorder of the County of Kern, State of California.

1 Subject To: All Covenants, Conditions, Restrictions, Minerals
2 and Water Rights, Rights-of-Way, and Easements as granted and
3 reserved in previous deeds of record.
4

5 Burial Plots: The court awards both of the following two (2) burial plots at Rose Hill
6 cemetery to Suzie Young (with a combined fair market value of \$20,000.00):
7

8 PLOT NUMBER 1: Grave number 3, lot 1732, Garden of Gratitude at Rose Hills
9 Memorial Park, 3888 South Workman Mill Rd., Whittier, California 90601.
10

11 PLOT NUMBER 2: Grave number 4, lot 1732, Garden of Gratitude at Rose Hills
12 Memorial Park, 3888 South Workman Mill Rd., Whittier, California 90601.
13

14 2008 Tax Debts: Charlie Yingzhou Zhao and Suzie Young have been filing separate tax
15 returns since 2007. Charlie Yingzhou Zhao claimed at trial that he owes taxes for 2008 in
16 the amounts of \$5,097 federal and \$1,882 state. The Court finds that this tax liability is the
17 separate liability of Charlie Yingzhou Zhao and awards it to him as his sole and separate
18 debt.
19

20 Life Insurance: The parties have two life insurance policies, one with Great West and the
21 other with MetLife. The Court awards each policy at \$0 value to the named insured(s) as
22 that person's sole and separate property, and subject to any loans or encumbrances thereon.
23

24 Jewelry (Rings and Pearls): The Court finds that the jewelry in the possession of Suzie
25 Young (rings and pearls) constitutes a gift from Charlie Yingzhou Zhao and awards the
26 jewelry to Suzie Young as her sole and separate property.
27
28

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

5
6 Breach of Fiduciary Duty Claims: After consideration of all of the evidence, the Court
7 finds by clear and convincing evidence that significant sums were, in fact, diverted away
8 from the community but that it was Charlie Yingzhou Zhao who was engaged in the
9 diversion, not Suzie Young. Charlie Yingzhou Zhao was diverting funds away from the
10 community – to his parents, to his sister Cindy, and to unknown people in China - without
11 Suzie Young's knowledge, without Suzie Young's written consent, in violation of his
12 fiduciary duties, and in violation of the Standard Family Law Restraining Orders in the
13 Summons (FL-110). And then, at trial, he tried to pin the diversion of funds on Suzie
14 Young. Only through Suzie Young's painstaking collection and analysis of bank records
15 was Charlie Yingzhou Zhao's conduct established. The Court finds that in diverting the
16 community funds, and then in trying to cover up the diversion by blaming it on Suzie
17 Young, Charlie Yingzhou Zhao acted with fraud, oppression and malice. The remedy for
18 such conduct, as set forth in Family Code section 1101(h) is the award to Suzie Young of
19 an amount equal to 100% of the funds wrongfully transferred, a total of \$247,999.

20
21 Spousal Support: Having considered all the evidence presented, and having considered
22 all of the factors under Family Code section 4320, the Court in the exercise of its
23 discretion declines to award any spousal support to Charlie Yingzhou Zhao.

24
25 Costs on Appeal: The request by Charlie Yingzhou Zhao for costs relating to the prior
26 appeal by Suzie Young (bifurcated trial to nullify the marriage) is denied.

27
28 Attorneys Fees: The request by each party for attorneys fees is denied.

1 Equalization Payment: After taking into account the division of property set forth above
2 and also granting to Suzie Young 100% of the value of the funds transferred by Charlie
3 Yingzhou Zhao in violation of his legal obligations, the Court finds that Charlie Yingzhou
4 Zhao owes Suzie Young the amount of \$1,599. The Court orders that Charlie Yingzhou
5 Zhao pay \$1,599 to Suzie Young within 30 days after entry of judgment in this matter. If
6 not paid in full, the unpaid balance shall accrue interest at the legal rate from that day
7 forward.
8
9

10 **IT IS SO ORDERED.**

11
12 DATED: MAR 09 2016

CHRISTINE BYRD

Christine Byrd
JUDGE OF THE SUPERIOR COURT

1 PROOF OF SERVICE
2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
3

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

7 On January 28, 2016, I served the foregoing documents described as:

8 [proposed] Judgment (FL-180) [with 9-page "Attachment to
9 Judgment", and this proof of service]

10 on the interested parties in this action by placing a true copy thereof enclosed in a sealed
11 envelope addressed as follows:

12
13 Charlie Yingzhou Zhao

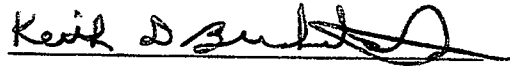
14 P.O. Box 3901

15 Alhambra, CA 91803
16

17 I deposited the sealed envelope with the United States Postal Service with the
18 postage fully prepaid. The place of mailing was Los Angeles, California.

19 I declare under penalty of perjury under the laws of the State of California that the
20 above is true and correct.

21 EXECUTED on January 28, 2016, at Los Angeles, California.
22

23
24 
25 Keith David Bershatsky
26
27
28

FILED
Superior Court of California
County of Los Angeles

DEC 30 2015

Sherri R. Carter, Executive Officer/Clerk
By Carl Bushnell Deputy

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

In re the Marriage of:

CHARLIE ZHAO,

Petitioner,

and

SUZIE YOUNG,

Respondent.

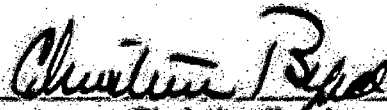
Case No. GD 044 309

**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



Christine Byrd

JUDGE OF THE SUPERIOR COURT

Charlie Zhao v. Suzie Young, Case No. GD 044 309

Trial commenced on Nov. 9, 2015,¹ 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 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.

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.

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

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.

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 \$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 this 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 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.

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.

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 H usband that resulted in 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

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.

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 #01-00156310 at 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 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 that the account be divided equally between the parties by awarding it to Husband, subject to 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 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 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. #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.

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

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

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

14. Citibank 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 Accounts
(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-10179-11 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 amounts 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 depositing 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 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.

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

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).

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 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 ¶11.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.

IV. 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 Zywiec* (2000) 83 Cal. App. 4th 1078. The Court did not consider or rely upon any "guideline amount" of temporary support by reference to the DissoMasterTM 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 Furn.	\$2,000		W
3. EI #xx6310	\$22,751	H	
4. EI #xx9009	\$22,352	H	
5. Capital One	\$408	H	
6. Cathay Bank	\$1,260		W
7. LA Fin. Credit Union	\$1,014		W
8. Fiscal Credit Union	\$35		W
9. W&P Comm. 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	-\$246,400
FC §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.

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

IX. 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

A handwritten signature in cursive script, appearing to read "Christine Byrd", is written over a horizontal line.

Christine Byrd

JUDGE OF THE SUPERIOR COURT

Court of Appeal, Second Appellate District, Division Eight - No. B271103

S245449

IN THE SUPREME COURT OF CALIFORNIA

En Banc

**SUPREME COURT
FILED**

CHARLIE ZHAO, Plaintiff and Appellant,

JAN 17 2018

Jorge Navarrete Clerk

v.

SUZIE YOUNG, Defendant and Respondent.

Deputy

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

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.

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

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued non-forfeitable benefit and is exempt from the tax imposed by section 4975 of title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of title 26.

(3) (A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term “qualified domestic relations order” means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term “domestic relations order” means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

- (i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,
- (ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,
- (iii) the number of payments or period to which such order applies, and
- (iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

- (i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,
- (ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and
- (iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(E) (i) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee—

(I) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(III) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of subclause (II), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(ii) For purposes of this subparagraph, the term "earliest retirement age" means the earlier of—

(I) the date on which the participant is entitled to a distribution under the plan, or

(II) the later of the date of [1] the participant attains age 50 or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(F) To the extent provided in any qualified domestic relations order—

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 1055 of this title (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(ii) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 1055(f) of this title.

(G) (i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

(H) (i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this

subparagraph referred to as the “segregated amounts”) which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(iii) If within the 18-month period described in clause (v)—

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in clause (v) shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan’s obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such Act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan. Nothing in the preceding sentence shall permit a requirement under section 1301 of this title of the payment of more than 1 premium with respect to a participant for any period.

(K) The term “alternate payee” means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply.

(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualified domestic relations order shall not be treated as garnishment for purposes of section 1673(a) of title 15.

(N) In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

(4) Paragraph (1) shall not apply to any offset of a participant's benefits provided under an employee pension benefit plan against an amount that the participant is ordered or required to pay to the plan if—

(A) the order or requirement to pay arises—

(i) under a judgment of conviction for a crime involving such plan,

(ii) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of this subtitle, or

(iii) pursuant to a settlement agreement between the Secretary and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of this subtitle by a fiduciary or any other person,

(B) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

(C) in a case in which the survivor annuity requirements of section 1055 of this title apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

(i) either—

(I) such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 1055(c)(2)(B) of this title), or

(II) an election to waive the right of the spouse to a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 1055(c) of this title,

(ii) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of this subtitle, or

(iii) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 1055(a)(1) of this title and under a qualified preretirement survivor annuity provided pursuant to section 1055(a)(2) of this title, determined in accordance with paragraph (5).

A plan shall not be treated as failing to meet the requirements of section 1055 of this title solely by reason of an offset under this paragraph.

(5) (A) The survivor annuity described in paragraph (4)(C)(iii) shall be determined as if—

(i) the participant terminated employment on the date of the offset,

(ii) there was no offset,

(iii) the plan permitted commencement of benefits only on or after normal retirement age,

(iv) the plan provided only the minimum-required qualified joint and survivor annuity, and

(v) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(B) For purposes of this paragraph, the term “minimum-required qualified joint and survivor annuity” means the qualified joint and survivor annuity which is the actuarial equivalent of the participant’s accrued benefit (within the meaning of section 1002(23) of this title) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

26 U.S.C. §414(p)

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

(1) In general

(A) Qualified domestic relations order the term “qualified domestic relations order” means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) Domestic relations order the term “domestic relations order” means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(ii) is made pursuant to a State domestic relations law (including a community property law).

(2) Order must clearly specify certain facts A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(B) the amount or percentage of the participant’s benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(3) Order may not alter amount, form, etc., of benefits A domestic relations order meets the requirements of this paragraph only if such order—

(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(B) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) Exception for certain payments made after earliest retirement age

(A) In general A domestic relations order shall not be treated as failing to meet the requirements of subparagraph (A) of paragraph (3) solely because such order requires that payment of benefits be made to an alternate payee—

(i) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(ii) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(iii) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of clause (ii), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(B) Earliest retirement age for purposes of this paragraph, the term “earliest retirement age” means the earlier of—

(i) the date on which the participant is entitled to a distribution under the plan, or

(ii) the later of—

(I) the date the participant attains age 50, or

(II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(5) Treatment of former spouse as surviving spouse for purposes of determining survivor benefits To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a) (11) and 417 (and any spouse of the

participant shall not be treated as a spouse of the participant for such purposes), and

(B) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 417(d).

(6) Plan procedures with respect to orders

(A) Notice and determination by administrator in the case of any domestic relations order received by a plan—

(i) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) Plan to establish reasonable procedures

Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) Procedures for period during which determination is being made

(A) In general

During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this paragraph referred to as the "segregated amounts") which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(B) Payment to alternate payee if order determined to be qualified domestic relations order

If within the 18-month period described in subparagraph (E) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(C) Payment to plan participant in certain cases If within the 18-month period described in subparagraph (E)—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(D) Subsequent determination or order to be applied prospectively only

Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in subparagraph (E) shall be applied prospectively only.

(E) Determination of 18-month period

For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(8) Alternate payee defined

The term "alternate payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) Subsection not to apply to plans to which section 401(a) (13) does not apply

This subsection shall not apply to any plan to which section 401(a) (13) does not apply. For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a) (13) applies.

(10) Waiver of certain distribution requirements

With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), section 409(d), and section 457(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order.

(11) Application of rules to certain other plans

For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) or an eligible deferred compensation plan (within the meaning of section 457(b)) shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A).

(12) Tax treatment of payments from a section 457 plan

If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.

(13) Consultation with the Secretary

In prescribing regulations under this subsection and section 401(a) (13), the Secretary of Labor shall consult with the Secretary.

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